

**Through the device of the Military Covenant,  
a comparison of the ideas of John Rawls & Germain Grisez**

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## Summary

It is the aim of this thesis to demonstrate that the concept of the covenant, as a traditional theological idea, has practical utility in public discourse in the UK.

This is done with reference to the secular humanist outlook of John Rawls. It is concluded that such an outlook that sees no role for Christianity in the public realm of political and social policy, does not of itself contain sufficient conceptual resources to furnish the world as fully as an approach that is inclusive of a religious dimension. That such a non-sectarian approach is possible is indicated by the use of New Natural Law, associated with Germain Grisez.

The Military Covenant is used as the vehicle to enable this project.

The end of the Cold war led to a re-examination of the relationship between the people of the United Kingdom and the British army. After a lengthy and difficult process the connection was summarised by the Military Covenant. This bound together the nation, the state and the army in a solemn manner. However what is a covenant? In an increasingly secular society such concepts that have a theological root are little understood. This is to the impoverishment of national life. The rise of secular liberalism is examined through John Rawls' *Theory of Justice*. This is presented as a significant text in understanding this change. Rawls' misplaced reliance on the rationality of human nature means that secular liberalism is inadequate as a comprehensive model for public policy.

In the light of the emergence of the covenant-idea as a robust example of Christian theology, a means of its accommodation is found in New Natural Law. Grisez and his colleagues propose a scheme of thought is based upon the general aspiration people have to live purposeful lives. The Military Covenant is found to find its home in this approach.

The legitimate place of Christianity in British society is affirmed as a means to promoting the common good.



## Thesis Declaration and Statements

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Through the device of the Military Covenant,  
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## Introduction

I

### The Importance of John Rawls in contemporary public ethics

To offer an analysis that argues not just for the persistence of Christianity, but its continued potency, appears to fly in the face of reality. The contentious character of the role of religion in society is observable in many directions. The decline in those who identified themselves as Christian is apparent. The diminishing attendance at Sunday worship is taken for granted in the popular media. This decline has been accompanied by the emergence of the voice of those who oppose the role of religion in society.

This thesis makes two proposals that are rebuttals of this picture. Firstly, it is argued that attempts, represented chiefly by John Rawls in his *A Theory of Justice*, to move society on to a thoroughgoing secular basis, are bound to be unsuccessful. Christianity is a fundamental and enduring part of political culture, and has a positive contribution to make, in what is widely called "public space". Secondly, a suggestion is made for an approach to public ethics which is consistent with Christian belief, and which cannot be fairly regarded as unreasonable. The main thrust of this work is that the common good should have many authors, even if individually some seem to barely acknowledge the others.

The tone in which this thesis is written is, hopefully, moderate. The central concern of Rawls is for justice, and that should be acknowledged as a well intentioned contribution to the common-good. *A Theory of Justice* is written with a positive intent. Its antagonism toward religion is not its primary ambition. The thread which runs through the thesis is provided by the Military Covenant. This strikes me as being so patently redolent of Christianity that I am surprised it seems to be little recognised. Indeed, as I show, it is a connection that commentators seem to go out of their way to evade. Why they do this is something that I believe is accounted for by the emergence of a culture that is either ignorant of or unwilling to engage with Christianity.

This thesis arose out of a sense of intrigue I have long had about Rawls. I first came across him when I was a social science undergraduate at an unremarkable plate-glass university in the north of England, with all due apologies to that institution. I vividly remember how, when I visited the university bookshop, the volumes I wanted to browse were always surrounded by a barricade of *A Theory of Justice* (abbreviated henceforth to *TJ*) books. They were literally stacked in piles on the floor. From that experience, I hope it is not unreasonable to extrapolate that in other universities there was a similarly wide exposure to *TJ*. While *TJ* cannot be regarded as the single cause for the emergence of this significant change in public policy, if a canon of texts was put together that have contributed to it, then I would expect it to be a leading one.

## II

The context of this thesis:

### Army Chaplaincy and the Decline in Formal Religion in Britain

What follows in this thesis is pitched at a conceptual level. However the context in which it is written, is provided by my service in the army since 1995 as both a volunteer and a regular army chaplain. Therefore the voice of a practitioner and not an academic lies behind it. The enterprise of writing what follows, has felt akin to a voyage or a journey. It has been the process rather than just the completion of the work that has been of value to me.

Good chaplaincy is based upon praxis. It involves the application of a developing understanding, derived from faith and other sources, in such a way that practice is heightened. My experience leads me to believe that without the inclusion of a religious perspective, the army, as a part of society, would be hugely diminished and suffer significant damage.

The setting for this study is Britain. That means that Rawls is approached from that perspective and my evaluation of him inevitably is shaped by that. On the other hand, because *TJ* proposes a public philosophy that is intended to be truthful, to use one of Rawls own terms, it is not inappropriate that it is tested in the situation I provide. To understand Rawls and the humanistic perspective he advocated in the British environment, there are two important and relevant topics to be acquainted

with, namely secularism and the theory of secularization. These help explain the context within which chaplaincy, which is representative of public Christianity, operates, and provide helpful tools of analysis in navigating the rapids of the river that are the perceptions of officers and soldiers. A significant contemporary academic figure in the UK who writes on these topics is Steve Bruce, who is also a notable proponent for the decline of Christianity. In his book *Secularization*, he argues for a theory of secularization that applies to “modern industrial liberal democracies” (Bruce 2011:4). Implicit in Bruce’s approach is a distinction between secularization theory, which he regards as a dispassionate social science that explains the decline in religion (Bruce 2002:xiii), and secularism, which is a commitment as a *minimum* to the neutral role of religion in the public square. Bruce claims to be an “old-fashioned positivist” (Bruce 2011:vi), a worldview discussed in Chapter Eight that claims to be scientific, and distinguishable, at least in the minds of people like Bruce, from those who oppose religion on other, more ideological, grounds.

There are two key aspects to Bruce’s approach. Firstly, he demonstrates the gradual but consistent decline in religious adherence and, secondly, he offers an explanation for it which is due to a “synthesis of various attempts to explain the general observation that modernization undermines the power, popularity, and prestige of religious beliefs, behaviour, and institutions” (Bruce 2011:24).

The power of Bruce’s analysis is clear. The decline in formal religion (and in the context of Bruce’s writing, chiefly that of Christianity) is incontrovertible. However, and whatever Bruce may feel personally, given the distinction that is part of his positivist outlook between fact and value, this is not necessarily a beneficial development for society. It is perhaps at this point that secularization and secularism become entwined, with the former becoming a justification for the latter.

### III

#### Challenges to Secularization Theory: Woodhead, Habermas and Williams

On the other hand, secularization has come under a great deal of scrutiny. Indeed, Bruce’s book carries the subtitle *In Defence of an Unfashionable Theory*. In *Religion and Change in Modern Britain* (2012), Woodhead and Catto provide a volume that

surveys the position and role of religion (not just Christianity) in contemporary UK against the background of secularization theory. Their view is that secularization and its polar opposite, desecularization, are unhelpful ways of understanding the complexity of religion. A much more fluid and insightful approach needs to be adopted.

A significant contemporary public philosopher whose view supports this nuanced position is Jürgen Habermas (1929-). According to Kirwan, he is a figure of comparable stature to Rawls (Kirwan 2008:141). His ideas arguably reflect both the contemporary scepticism towards religion, while also hinting at a way in which religion can play a part in public affairs. In *The Inclusion of the Other* (1998), Habermas reviews the role of Christianity in a short survey of the history of moral philosophy. This shows for him that the “dissolution of metaphysical concepts” has occurred; he comments that “moral philosophy depends on a ‘post-metaphysical level of justification.’” (Habermas 1998:11). However, despite this analysis, the reason for Habermas expressing a positive view of the role of religion is based upon his formulation for establishing moral coherence in a pluralistic society. For him, there are people of good will who will seek to resolve their incompatible moral frameworks through “communication”, making possible a shared social life that rests upon “linguistically mediated understanding” (Habermas 1998:39). Crucially, this is an indication that there exists a normative quality to human existence which enables a shared morality, a key idea that underpins the third part of this thesis. (Habermas 1998:40)

Notwithstanding the scepticism Habermas has towards religion, in his opinion there is no *a priori* exclusion of religion from the public square. It would appear therefore that Habermas combines a broad acceptance of secularization along with a place for religion. Where common cause can be found between religious believers and those of no faith, then mutual understanding can follow. Indeed, its exclusion will result in the deprivation in quality of public debate and perhaps in the form of the common good. For rationalists, the possibility of religion being able to offer a meaningful contribution may feel incongruous. However, history patently suggests otherwise. Many of the aspects of the post-war Welfare State in the UK were created on foundations provided by the churches (Woodhead and Catto 2012:10).

This interpretation of Habermas bears resemblance to the approach contained in *Faith in the Public Square* by Rowan Williams. Written towards the end of his time as Archbishop of Canterbury, this book identifies a tendency in some forms of secularism that is not merely neutral, but deeply antithetical to religious views in public life (Williams 2012:12). He argues that a healthy society consists of an environment in which organisations of various sorts have a role to play. These groups will be very diverse in character but embody aspects, be they political, philanthropic or cultural of civil public life. Despite their differences, which may be based upon fundamental matters, these organisations will share a commitment to deal non-violently with one another, and with the intention of building up the common good. It is one of the roles of government to maintain reasonable access.

This is more than just an exercise in politeness on behalf of the state and those who are opposed to religion in principle. It means that in some areas of national life, where the general good is served, religious groups can have an involvement that affects the nation's life.

If the state does indeed have a kind of moral interest, as I have been suggesting, it is twofold - an interest in securing the liberty of groups to pursue their own social goods, and an interest in building in to its own processes a set of cautions and defences against absolutism. But to use the phrase yet again, in a complex society, groups may need each other's co-operation to pursue their own social goods. And one of the things that the state can do is to facilitate such co-operation through its own sponsorship and partnership. ... Education is an obvious context in which the state has a moral interest of the kind I have outlined in nourishing co-operation. To pick up a currently controversial issue, the state's assistance to 'faith schools' is not the subsidising of exclusivism but the bringing of communities out of isolation to engage with the process of maintaining what they and other communities together need, and to argue and negotiate. The state is thus more than a tribunal; it exercises its lawful character by promoting and resourcing collaboration. (Williams 2012:57)

This passage is significant for this thesis: it moves from the contention that Christianity has a legitimate stake in public policy because of an organic relationship through history and culture, to it having a connection because it adds *positively* to the good of society. Christianity is essential not only in enabling society to *understand* itself, but it has a role in *developing* the common good.

#### IV

### Implications of Woodhead and Catto's Argument: Case Studies in Religiosity and Army Chaplaincy

In their book, Woodhead and Catto include a case study entitled *The religiosity of young people growing up in poverty*. Its authors, Vincett and Olson, adopted an approach that sought to get around the narrow definitions of religion used in secularization theory (such as church attendance and other formal characteristics of belief) to focus on attitudes and behaviour that reflect *themes* to do with religion (Woodhead and Catto 2012:198). In adopting this approach, they achieved findings that mirror the experience of army chaplains.

This can be shown by a personal anecdote. While in an operational tour, I was sought out by a young private soldier and asked to “bless” a rosary that he had just received from his grandmother. The soldier came from a Roman Catholic background, but had no interest in attending a church service. Nonetheless he was very clear in wanting a prayer said over the rosary. My not being a Roman Catholic clergyman was not relevant to him. I was his ‘padre’ and he expected me to, using my term, ‘turn on’ or ‘activate’ this religious artefact. My response was to meet this request: I felt it was important to meet this young soldier at a time when I could be, as he discerned it, of practical assistance to him. As a priest I was helping him to recognise God’s presence in the midst of a dangerous operational tour in a way that would give him some peace of mind. Underlying this exchange, it might be thought, is an inchoate sense on behalf of the soldier of Christian belief. This, however, might be the wrong judgement. Rather than reflect a sense of confusion, based on the unwillingness of the soldier to participate in the norm of public worship and to observe the denominational differences between a Catholic and Protestant clergyman, the soldier was perhaps being faithful in terms that were appropriate for his own religious sensibility. The soldier was, simply put, being faithful in a way that connected with his own sense of self in an equivalent manner to those who attend church as a mark of their own religion. This view, that subtlety is required in acknowledging legitimate Christian expression, is in accord with the observation made by Vincett and Olson.

It is possible to be sceptical about such claims concerning religion. From the viewpoint of the rationalist, such behaviour appears to be little more than superstition. From the orthodox believer's perspective, it lacks integrity; it appears not to be accompanied by the conduct that traditionally accompanies conventional religious conviction. However, such a judgement would be mistaken. In the conclusion to their case study, Vincett and Olsen set out an interpretation of their findings which resonates with this view. They draw attention to a paper by Day entitled *Propositions and Performativity: Relocating Belief to the Social* (Woodhead and Catto 2012:201), who refers to what she terms as 'practical belief' which is "a movement away from propositional or dogmatic belief." (Woodhead and Catto 2012:200). As Vincett and Olsen suggest, this is to position material, such as the encounter I described, in such a way that they are accessible to theological interpretation and, more broadly, the social sciences. Theologically, the concepts and qualities revealed by these accounts are consonant with Christianity.

What they indicate is that conventional aspects of Christianity are often simply culturally alien to many people who inhabit socially deprived backgrounds, from where many soldiers originate. After acknowledging a similarity between their own and Day's views, Vincett and Olsen comment:

... such characterizations would fit the religiosity we encountered among young people in areas of deprivation, but the bounded agency and mobility of young people in poorer areas limit the kinds of performances they can create and the places in which they can safely practise or express their beliefs. Indeed, if many young people in poorer areas sense that religious people are 'better' or of a different class from them, even crossing the boundary between the street and a church youth group requires a self-confidence and security that may not be available to them. And since many young people of all classes feel that religious beliefs cannot be discussed or admitted among peer groups, the boundaries around their religious performances become ever more fixed and unforgiving, especially, it seems, among young, white Christians. Privatised religious practices, however, do not necessarily translate into highly individualized (that is, purely self-focussed) beliefs, as the fairly common conception of God outlined above indicates. (Woodhead and Catto 2012:201)

Latitude and toleration are noteworthy qualities in interpreting religious beliefs and behaviour: without them the full picture of what is occurring in terms of religion may be misunderstood.

The significance of this view for what follows is that it adds sociological support to the largely conceptual analysis that follows. When taken together, they indicate powerfully that the role of Christianity is far more important than those who are secularists, that is ideologically committed to the removal of Christianity from the public square, realise or feel comfortable about.

An endorsement of this conclusion is provided by work reported by Langston in the magazine of the Royal Army Chaplains' Department. In June 2012, in the light of the widespread perception of the decline in the Christian religion, the chaplaincy team at the Infantry Training Centre Catterick, where recruits are prepared for service in front-line fighting units, decided to examine whether there was a continued case for chaplains. Discussions with training staff showed that chaplains were seen by them as suppliers of pastoral care. The article states that the chaplains were uneasy with this perception, as it made no reference to any religious role which, for them, was their *raison d'être* (RACHD Journal 2013:34). This led to a project to see if it could be demonstrated that there was a need for the sort of presence the chaplains wished to provide. A questionnaire was produced for use at platoon level, inviting yes/no answers. The findings showed that out of 1552 questionnaires, 34% of recruits expressed a wish for religious/spiritual support, 45% came from a religious/spiritual background and 13% requested unspecified support from a chaplain (RACHD Journal 2013:35). The chaplains themselves expressed some surprise at what they felt was a positive outcome, and as a result have set about putting in place practical measures involving the sending of text-messages to mobile phones and the development of computer software to respond to the interest of recruits in Christianity (RACHD Journal 2013:36).

## V

### The outline of this Thesis

That is the background to this thesis, in terms of empirical case studies, cultural change and arguments about the validity of sociological theories as helpful or otherwise in explaining long-term cultural change on the role of formal religion in British life. The concept of the Military Covenant, and the moral philosophy of John



Rawls are ways of testing further whether religious belief and practice still has a role in contemporary Britain. Let me turn now to the outline of the thesis itself.

The opening two chapters seek to introduce the Military Covenant. The change in societal attitudes, mentioned above, brought about its emergence. In the aftermath of the Cold War, the British army was confronted with changed circumstances. It grappled with its own cautious instincts in the face of an emerging and different outlook. This is best summarised in the move from arguing that it had a *right* to be different from a liberalising society, to showing that it had a *need* to be different. This put its relationship with the country onto a clearer footing as a new millennium arrived.

Fastening on the concept of a covenant to express the connection between the army and society, was a striking outcome. It succeeded in describing the depth of the mutuality that must exist if UK armed forces are to be effective in their unique responsibility of defending the nation's interests to the ultimate of lives lost. Yet on the other hand, the extent to which the meaning of a covenant is understood, is problematic and this is the theme of Chapter Two. In an age when theological literacy is not high, the true nature of the term is not easily appreciated. The failure to do so is unfortunate, as it deprives society of a dimension with which to enhance significance and cohesion. Chapter Two shows that the covenant-idea is actually a highly potent concept which has a meaning that is not translatable into a secular mindset. An imagination that is at least capable of appreciating the significance of religious sensibility is a requirement if the full range of intellectual tools is to be used in public discourse.

Having set out the Military Covenant and given attention to the meaning of covenant itself by examining its theological origins, Part Two is an argument for the failure of secular humanism based upon the ideas of John Rawls.

In Chapter Three, the framework of *TJ* is set out. Attention is given to the veil of ignorance and the basic structure of society that emerges from it. Chapter Four offers an assessment of Rawls' ideas and concludes that there are several reasons for rejecting them as inadequate. What emerges is that, overall, Rawls produces a body of work that is fatally flawed by its American provenance and fails to offer a

non-contentious understanding of a just state. His work is biased in terms of its outcomes. Despite this widely-held conclusion, it is my view that John Rawls' significance is more than just his published work. The themes of justice and equality that he sought to advance have some relationship to the prevailing *zeitgeist* of the 1970s onwards. While the precise basis of this relationship is beyond me to explain, I contend that he is an influential and representative figure. While his association with progressive themes is a positive quality, there is a deep difficulty in his settled view for the contention of this thesis: that theological ideas have a necessary place in public reasoning. *Not only in TJ, but in his other mature works, Rawls is a liberal secular humanist who has little or no space for religious views.*

Chapter Five however is more irenic in its tone. Leaving aside the reservations of the previous chapter, it seeks to show that *TJ* is, in fact compatible in practical terms with the esteem that the Military Covenant gives to the army and its personnel. The nature of a liberal society is to defend itself and a necessary requirement of this is the provision of military force. The allocation of goods to achieve this is a reasonable aspect of society. This, of course, indirectly returns us to the criticism made in the previous paragraph that shows that there is a problem with *TJ* and secular humanism generally. This is because if the idea of covenant lies in theology, and there is no successful translation into an accurate secular expression, then it indicates that secular humanism suffers from a deficit of conceptual resourcing. In the spirit of this thesis, this is not meant to be a defeat of secularist theories as much as an appeal towards co-operation. Religious approaches have a legitimacy that is a contribution to the common good.

Criticism continues in Chapter Six, where the differences are set out between Rawlsian rationalism, and the insights provided by religious belief. Difficulties are indicated, with the central weakness being focussed on how our human nature is best understood. Rawls is shown to have an inaccurate view of humankind. He is revealed to be too narrow in his appreciation of human attributes and complexity while and rather naive. In Chapter Seven his lifelong antipathy towards Christianity and his reasons for it are explored.

In Chapter Eight a return to the British context is made when the ideas of Mary Warnock are introduced and which bring Part Two to an appropriate close. Warnock

has been a leading UK ethicist who adopts a similarly sceptical approach to religion as a reliable partner in public policy matters to Rawls. A comparison is made with the ideas of Richard Harries, who is used as her interlocutor to show that her approach excludes legitimate voices from public debate.

In Chapter Nine the ideas of New Natural Law are set out and examined. Related to the much older tradition of natural law and in contrast to the humanistic rationalism of Warnock, it is an approach that proposes an alternative, more inclusive approach to that of Rawls' views. A series of universal goods that make for human thriving are identified and a scheme set out where these can be applied to the everyday world of practical living. In particular the ideas of Germain Grisez and John Finnis are examined as two of the main advocates of New Natural Law (NNL) theory.

While Chapter Nine is largely theoretical, in Chapter Ten direct engagement between New Natural Law and the Military Covenant is undertaken. What emerges is the importance of teleology as a determiner of current practice. If UK defences are to be robust, then what is it necessary to put in place for that to be achieved? From the identification of this good intention or end, actions follow. One of these is the Military Covenant. The conclusion reviews the argument of the thesis and makes a strong claim that the contribution of NNL is superior to that of John Rawls in understanding the Military Covenant in particular, and the role of religion in general, in public life. To anticipate the arguments, the conclusion argues two things. First, quoting from page 211, 'the theologically grounded concept of the covenant-idea expressed in the Military Covenant is found to provide utility in public understanding and which is beyond the scope of secular humanism to embrace'. That implies that Rawlsian moral theory is inadequate, however sophisticated and persuasive it might appear. Secondly, the thesis claims that the rationale behind the Military Covenant can be understood from the writings of Grisez and Finnis. To quote once more from the concluding pages, 'For Grisez and Finnis, the two leading proponents of NNL, the inquisitive nature possessed by human beings gives rise to the ability to make decisions that enable people to live well and to organise society accordingly. It is this that ultimately gives rise to the Military Covenant. Although the opening chapters of this thesis explore the origins of the Covenant in terms of the rebalancing of the army after the end of the Cold War, it has been shown that the kernel of the meaning of

the Military Covenant is that of selfless sacrifice on behalf of military personnel. ' In a nutshell, the existence of the Military Covenant in contemporary British society needs to be justified and explained on its own terms. Rawlsian theory does not do this. NNL, on the other hand, provides a good conceptual explanation.

Writing this thesis has been one of the outstanding experiences of my life. I associate it with several places around the world – from New York to Kabul - where I either was visiting or serving as a chaplain and where it was written. Whilst full responsibility for what follows lies with me, I would like to record my sincere thanks to my supervisor, Peter Sedgwick. He re-ignited my interest in Rawls when he led a class as part of the MTh course in Chaplaincy Studies, which he instigated at St Michael's College, Cardiff. Peter has been a source of relentless encouragement during the, what has seemed at times to have been, long years in which this thesis has taken to write. Along with him, Sue, my wife and companion, has kept me 'on task' whenever I have showed signs of slacking. I thank them both.

**PART ONE**  
**THE MILITARY COVENANT**

## **Chapter One The Development of the Military Covenant**

### **I**

#### **The Armed Forces Covenant and Public Opinion**

**An Enduring Covenant Between  
The People of the United Kingdom  
Her Majesty's Government  
– and –  
All those who serve or have served in the Armed Forces of  
the Crown  
And their Families**

The first duty of Government is the defence of the realm. Our Armed Forces fulfil that responsibility on behalf of the Government, sacrificing some civilian freedoms, facing danger and, sometimes, suffering serious injury or death as a result of their duty.

Families also play a vital role in supporting the operational effectiveness of our Armed Forces. In return, the whole nation has a moral obligation to the members of the Naval Service, the Army and the Royal Air Force, together with their families. They deserve our respect and support, and fair treatment.

Those who serve in the Armed Forces, whether Regular or Reserve, those who have served in the past, and their families, should face no disadvantage compared to other citizens in the provision of public and commercial services. Special consideration is appropriate in some cases, especially for those who have given most such as the injured and the bereaved.

This obligation involves the whole of society: it includes voluntary and charitable bodies, private organisations, and the actions of individuals in supporting the Armed Forces. Recognising those who have performed military duty unites the country and demonstrates the value of their contribution. This has no greater expression than in upholding this Covenant.

#### **The Armed Forces Covenant 2011**

In 2011 the Coalition Government, barely a year old, put into law the Armed Forces Covenant (2011 MOD). This made good the pledge that the Prime Minister, David Cameron, made when he was Leader of the Opposition to rebuild the relationship between the nation and the armed forces of the United Kingdom following the attrition he alleged it had sustained as a result of the conflicts undertaken by UK forces in Iraq and Afghanistan (Cameron 2010).

The Covenant begins by stating unequivocally that the principal responsibility of government is to defend the state. In the western tradition this has come to be seen as virtually coterminous with defending the people and the goods that make for their general well-being. In theory at least, unless the state is able to perform this responsibility, its legitimacy is weakened to the extent that the state collapses. In comparison with this categorical view of the role of the state, the *immediate* origins of the Armed Forces Covenant owe much to the conflicts undertaken in Iraq and

Afghanistan and some of the consequences that followed. Those campaigns led to concern in the army about overstretch and the straining of an earlier statement of the connection between the country and the British army called the Military Covenant. Produced in 2005 this, strictly speaking, did not include the Royal Navy and Royal Air Force.

The Armed Forces Covenant can readily be regarded as an example of skilful political intervention by the Conservative Party. In 2008 an inquiry was set up by the party to give detailed consideration to these matters under the chairmanship of the author Frederick Forsyth. This led to a report *Restoring the Covenant* in the following year. This suggested that the hitherto single service “Army Covenant” was “inappropriate” and that a tri-service one should replace it (Forsyth 2009:3). Following the formation of the Coalition Government, a report on the Military Covenant led by Strachan (Strachan 2010) coincided with work that culminated in the publication of the 2010 *Strategic Defence and Security Review* (SDSR) in which the phrase “Armed Forces Covenant” occurred. This was a commitment to ensure that members of the armed forces and their families were valued and that they are cared for appropriately (Section 2.B.3). In the lead up to the subsequent 2011 Armed Forces Act there was further discussion about the status of the Armed Forces Covenant in the work of the Parliamentary Select Committee set up to examine the Bill. It received evidence from many veterans’ organisations and from the Church of England.

The centre of the debate, the issue of which will form the content of the next chapter, fastened onto the question of whether the Covenant itself should be passed into law or not. The solution contained in the 2011 Act was that the Secretary of State for Defence was required to present an annual report on the Armed Forces Covenant.

An armed forces covenant report is a report about effects of membership, or former membership, of the armed forces on service people, or particular descriptions of such people—

- (a) in the fields of healthcare, education and housing; and
- (b) in such other fields as the Secretary of State may determine.

(2011 Armed Forces Bill:2)

As will be shown later, comparison between the Armed Forces Covenant of 2011 and the Military Covenant of 2005, shows a subtle dilution of the robust and focussed language and phrasing away from the earlier publication. It is also striking that both have very different contexts. The Armed Forces Covenant is literally a 'stand alone' document, being published as a single document. In contrast the Military Covenant belongs within the explanation of the Moral Component of Fighting Power that lies in the military publication *ADP Land Operations* and its 2010 revision. In other words, the Military Covenant is not a decorative statement of goodwill towards the armed forces, but one with real utility. While the path to the Armed Forces Covenant is in practical terms recent and political, in comparison the Military Covenant belongs to the decade following the end of the Cold War. It has its origins in the work of a small group of academics who undertook a considerable reflection on the nature of military service which was taken up by the British army as a solution to a deep problem.

This challenge is perhaps best regarded as an enduring one in modern circumstances and arises from the increasingly complex character of security during the opening decade of this century. Writing the introduction to a study on the issue, Cornish commented:

Al-Qaeda's attacks on the USA in September 2001, together with other terrorist outrages in Bali, Madrid, London and elsewhere, all indicate that a new and urgent, if not entirely discrete area of policy has indeed evolved in recent years. For those in government concerned to ensure public safety against violence and aggression, and the protection of property and territory, these terrorist attacks call for a response which has elements of both foreign policy and defence policy, but which fits easily into neither category of policy and decision making. (Cornish 2007:7)

He indicated that in this changed environment a major re-examination of practices and policies across the spectrum of security is necessary. Driving this process is the threat that could arise from many sources, from sabotage initiated in cyber-space through to actual physical violence either of a military or terrorist nature.

Additionally, and the heart of the matter for what follows in this thesis, there was identified a further way in which western states were vulnerable. Increasingly the power of public opinion was seen as a factor in influencing the shape of security and the extent to which those means at its disposal were deployed. This was true in the



case of the deployment of the armed forces. The British constitutional position of the supremacy of Parliament sits at odds with the fact that when it comes to matters of war, the Royal Prerogative still pertains. This means that the executive, effectively the prime minister and the cabinet, can lead this country into war. Following the contentious deployments of UK forces to Iraq and Afghanistan there have been initiatives to reform this situation.

In October 2007, although it ultimately never became the basis for legislation, a Government Consultation Paper *The Governance of Britain War powers and treaties: Limiting Executive powers* was published. This set out the possibility of giving Parliament responsibility for sending UK forces into fields of conflict. The paper set out the case for creating a mechanism in which there was a balance achieved between allowing Parliament a full say in the deployment of armed forces whilst allowing sufficient flexibility for the executive to act in the circumstances of an emergency and where secrecy was an issue.

The Foreword to the Paper indicated that this development reflected the transformation in society (*The Governance of Britain* 2007:5). While the UK until the close of the Second World War could be characterised as being populated by a largely white homogeneous community, albeit with national and regional variations, with an overwhelmingly Christian cultural tradition, the UK of the new millennium was altered. Whilst the population was by a heavy majority still white, there were significant ethnic communities whose origins lay outside of the British Isles, indeed Europe. There was a general increase in social awareness and national life had greatly diversified towards multi-culturalism. As a result there was a general expectation that political processes must be more transparent.

There was, however, a subtlety in this that was crucial. The spirit of openness had to be able to accommodate the needs of security, which included how those involved in delivering defence are regarded.

One objective of a more structured role for Parliament is to show the troops that Parliament, and through them the nation, is fully behind them and supports them in the difficult and dangerous task they are undertaking. The procedures put into place must not undermine that

objective; (*The Governance of Britain War powers and treaties: Limiting Executive powers* 2007:10)

Therefore the call for increased openness had to be commensurate with allowing the armed forces to operate with public support.

At first sight this appears a surprising statement; historically the concerns of soldiers have not appeared to be a significant matter. As an organisation characterised by resolute discipline, the role of the soldier has traditionally been to follow the orders issued by the chain of command. As the Duke of Wellington expressed it:

I have ate of the King's salt, and, therefore, I conceive it to be my duty to serve with unhesitating zeal and cheerfulness, when and wherever the King and his Government may think proper to employ me. (*British Defence Doctrine* 2008:51A)

Increasingly however matters like morale are seen as crucial for the effectiveness of the armed services. In an era when society is becoming more concerned about the use made of them, the British army and other branches of the forces are reliant upon society's *permission*, in a general sense, if they are to be effective. In the space of time between the Governance Paper and the present there has been no change in this.

## II

### The Military Covenant

As indicated above, the antecedent for the Armed Forces Covenant is an initiative of the British army which formulated the Military Covenant. In 2000 it appeared in the publication *Soldiering - The Military Covenant* and was subsequently republished as part of a more comprehensive document that dealt with the life and work of the Army in 2005. That document, *Army Doctrine Publication Land Operations* (subsequently *ADP Land Operations*) was itself updated in 2010 under the slightly different name of *ADP Operations*, although it remained substantially the same as the 2005 document. Both of these documents share the same version of the Military Covenant. Despite its broadening into the Armed Forces Covenant, the Military Covenant remains an integral part of *ADP Operations*. It is because of this importance to *military* doctrine, rather than the overtly *political* character of the Armed Forces Covenant, as well as

the author's own deeper experience of service under the Military Covenant, that it is the Military Covenant that is mainly focussed on throughout this thesis.

### **The Military Covenant**

Soldiers are bound by service. The nature of service is inherently unequal: soldiers may have to put in more than they receive. Ultimately, they may be called upon to make personal sacrifices - including death - in the service of the Nation. In putting the needs of the Nation, the Army and others before their own, they forgo some of the rights enjoyed by those outside the Armed Forces. So, at the very least, British soldiers should always be able to expect the Nation, and their commanders, to treat them fairly, to value and respect them as individuals, and to sustain and reward them and their families with appropriate terms and conditions of service. This mutual obligation forms the Military Covenant between the Nation, the Army and each individual soldier. To a greater or lesser extent such a common bond of identity, loyalty and responsibility has sustained the Army and its soldiers throughout its history. It is a covenant, not a contract, and it is binding, in every circumstance. Unless Nation, Army and soldier alike recognize and understand that it must be upheld come what may, then it fails. If it fails then first goodwill and then, ultimately, trust, is withdrawn. It has perhaps its greatest manifestation in the annual commemoration of Remembrance Day, when the Nation keeps covenant with those who have given their lives in its service.

The Military Covenant 2005  
*ADP Land Operations 2005:146 paragraph 0715*

Although older than the Armed Forces Covenant, the emergence of the Military Covenant is itself a relatively recent development. It was part of the surfacing into written form of what had hitherto largely been a body of unwritten British military doctrine that only took place formally in 1989. Until then, the British army got by on an ad-hoc basis reflecting a combination of "pragmatism and flexibility" (Rollins 2006) developed over decades, but especially during the Second World War. Emerging from the War, the British army had two war-fighting cultures based upon the tactics associated with the leading commanders in the victories over Germany, Montgomery, and Japan, Slim. Montgomery's approach has been characterised as being attritional and involving the erosion of an enemy until their resources and will to contend have been sapped. Slim, on the other hand, is associated with a manoeuvrist style which involves the defeat of an opponent by out-thinking them before a signal battle that reinforces the experience of defeat. Until 1989 military doctrine consisted mainly of being a dialogue between these two views involving military commanders and academics, punctuated by circumstances and developments.

Rollins suggests that Field Marshall Sir Nigel Bagnall was a particularly significant figure in the emergence of British military doctrine. In the context of the Cold War, when there was an expectation that the significantly weaker NATO armies would be overrun by their Soviet-bloc enemies leading to the recourse of nuclear weapons, Bagnall adopted manoeuvrist tactics in order to defeat and not just delay the Soviets. When appointed Chief of the General Staff between 1985 and 1988, he commissioned *Design for Military Operations The British Military Doctrine* (1989). General Michael Jackson, then Chief of the General Staff, in his foreword to *ADP Land Operations*, ascribed this as giving to the British army for the first time an "... explicit description of the overall philosophy and principles by which it should operate." (2005:1). From that time onwards there was an evolutionary development of British military doctrine (Rollins 2006).

### III

#### Societal Influences on the post-Cold War Army

The difficult security situation facing the UK at the beginning of this century was further challenged than otherwise might have been the case by rising expectations concerning accountability and transparency in society. Correspondingly the political culture of the UK was changing; the pace and character of what emerged affected the armed forces which were not hermetically sealed from the wider developments of society. The Consultation Paper *The Governance of Britain War powers and treaties: limiting Executive powers* represented this extremely well. While being a product of contemporary political events and concerns, it also debated a major constitutional change to anchor the fundamental duty of the state to prevailing circumstances and further adapt the British Constitution. The Armed Forces Covenant should be seen in this context. Whilst it may seem novel that the attitudes of society towards its armed services are a determinant of their effectiveness, it is not so. Examination of the 1990s illustrates this.

In 1993 Clarke identified three events that were significant at the time he was writing. Historically, the most specific was the end of the Cold War, symbolised in most people's minds by the Fall of the Berlin Wall in 1989. Although nuclear weapons

remained, the collapse of the Soviet Union meant that the threat of their use on ideological grounds was overcome. Related to this was the removal of the threat posed by the Red Army. Next, and more broadly, there was the pressure created by economic considerations on defence policy. The cost of military kit was increasingly expensive at a time of economic challenge. Finally, and also broadly, there was the relationship between what was then called the European Community and NATO in the context of the trans-Atlantic strategic alliance between European countries and the USA. Against this background Clarke suggested that the challenging and perennial question of what the British army was for, needed to be answered. If it is the defence of the UK and interests, then a small army may suffice. However if the concern is for fuller security, the size of the armed forces will need to be greater (Clarke and Sabin 1993:xv). This situation led the notable civil servant and expert on defence matters, Sir Michael Quinlan, to comment:

It is now commonplace that the framing of British defence policy, and a force structure and defence programme to underpin it, has come since the end of the Cold War to pose a range of problems both new and more complex, if less grave, than before. .. A good deal of the debate, *not least in Parliament*, still betrays basic incomprehension of what defence planning for a country like Britain can in practice be like in a world where security concerns have lost their old simplifying patterns. (Clarke and Sabin 1993:vii *italics added*)

The political and military landscape was therefore one of instability. However, this was not the only source of challenge that beset the armed forces. Strachan, whose 2000 book is particularly significant as it contains a number of noteworthy essays, together with Clarke and Sabin, produced specialist literature which dealt with the relationship between the military and society. In particular, their books indicated that there was a pervasive and powerful sense that society and the British army were diverging over their respective moral values. Strachan located this as beginning in the 1960s.

The military qualities of discipline, respect for authority, and self-denial lost the clear function they had possessed in the first half of the century. They were no longer necessary in the 1960's as they been in the 1940's. The Army saw its increasing divergence from the values of civil society as evidence of its own virtue. Rising divorce rates, widespread drug abuse, and – probably most of all – elevation of individual satisfaction over community needs were interpreted as evidence of degeneration. Servicemen were not themselves immune from these trends but the Army

collectively projected responsibility for them outwards, the failures of civil society. (Strachan 2000:xv)

In the same volume, Lieutenant General Sir Michael Rose, a noted military campaigner in the Balkans, expressed the same concern:

Today, the military ethos of the British Army, on which the moral component of fighting power depends, is not merely suffering from past neglect; it is being threatened by a mixture of cultural change within society, and by new national and international legislation. The importance attached in modern society to the pursuit of individual and minority-group interests – even when the consequences of this logic are damaging to the interests of the whole – has resulted in radical changes to the military ethos and disciplinary relationships within the armed forces. (Strachan 2000:viii)

Rose identified a cultural change as occurring in which individual rights were being given a weight that they had not been given previously. Beever explained that this was not something that was external to the British army; he suggests that since the 1970s changing social factors were having a significant impact on its culture and use (Strachan 2000:63). While not disregarding the broad changes identified by Strachan and Rose, Beever is specific in identifying changes amongst young officers and their wives as being significant. He points out that with officers increasingly being graduates they were in a position to make comparisons between their own remuneration and conditions with their non-military peers. Wives, who themselves were also increasingly graduates or otherwise wishing to pursue their own careers, were unwilling to follow their husbands as they progressed from posting to posting.

Such shifts in societal and personal attitudes were clearly a challenge, and had an effect on military doctrine. A key individual in shaping the British army's response was Sebastian Roberts. In Strachan's 2000 book, when he was Director of Public Relations (Army) and having been involved in the process of the writing of army doctrine, Roberts provided the following significant comment:

While armies remain nations' first choice for managing conflict, it is vital that they continue to attract high quality people. To achieve this, the Army must be in touch with what the best young people want, value or aspire to. Dying for king and country would probably attract less votes now at the Oxford Union than it did, famously, in the 1930's. (Strachan 2000:198)

The 1990s were, therefore, a decade of very significant challenge for the armed forces. On the one hand there were deep changes in values; on the other, recent

history was ambiguous about the utility of the armed forces. Although the outcome of the post-World War Two era was victory for the political and economic values of the West, it was achieved without the need for NATO to undertake any fighting. The value of the armed forces, which were vastly expensive, was inevitably brought into question as a result.

These changes have been keenly felt by the British army. Traditional practices and attitudes have been heavily challenged. Whilst a sense of mild victimhood can at times be detected in how the army felt about this, the challenge could not be ignored unless the British army's effectiveness was to be seriously compromised. In addition to the narrower, if valuable, reasons that Rollins describes for the emergence of British military doctrine, these broader changes in the country must be recognised as being fundamental in contributing to its emergence as well. The production of a written body of doctrine was the British army's own answer to what it was for, and the Military Covenant was a central part of this. If the period before and after the end of the Cold War was a time of significant change, then the Military Covenant set out the relationship between the nation and its army.

An aspect in the emergence of the Military Covenant was the unsuccessful way that the British army tried to deal with specific issues that emerged from shifts in society's values. The sense that the gap between society and army was a phenomenon of the 1990s needs to be placed in a context provided by the view that this has been in reality a permanent condition. The physical size of the army when compared to those of other states has always been small. The only exception to this has been during the world wars when mass conscription meant that the military effort was mainly provided by 'civilians in uniform' (Strachan 2000:3-6). However there were identifiable issues that confronted the British army as a result of changing civilian attitudes that put pressure on the army which went beyond the more slowly moving tectonics of societal change. Three of these were the declining number of young people available to join the armed forces and their physical fitness, homosexuality, and the role of women.

Of these, notwithstanding the sensitivities of human rights, the most fundamental was the number of young men who were available to join the armed forces. Without a recruitment pool, the maintenance of an adequate army is going to be challenging in any circumstances. Baynes (Strachan 2000) cites a report written for the then Adjutant-General published in 1988 which revealed that between 1987 and 2003 an anticipated fall of twenty per cent in those aged between 15 and 29 (Strachan 2000:57) would occur. In response a number of initiatives followed, such as the opening of the Army Foundation College in 1998.

Homosexuality and the role of women were sensitive issues because of the challenge that they provided to the existing pattern of moral mores. Writing about both matters, Beevor commented:

A major change of policy, which the British army still refuses to accept, is the recruitment of homosexuals. The army's reaction, which appears purely visceral to outsiders, focuses mainly on the threat of sexual tension within the barrack block, and the consequent effect upon group cohesion on operations. Servicewomen need privacy and protection from sexual harassment within their own quarters, it is argued, so same-sex personnel, obliged to live together, with shared showers and rooms, must be allowed the same sense of security. It is an argument which may be rejected outside the Army, but there can be little doubt about the strength of feeling on the matter within. (Strachan 2000:69)

In the years that have followed a pragmatic response prevailed while the army came into line with the values of society. Gay individuals now enjoy the same entitlement to join the armed forces and women are found throughout the British army, including the teeth arms where, although they may not serve as frontline combatants, they are found in the direct proximity of combat situations. Regardless of sexuality, misconduct is one of the grounds for disciplinary or administrative action,

The debate about such piecemeal issues shows that in resolving the diverging standards between society and the army, it was the views of society that prevailed. The path to the emergence of doctrine that was distinct from civilian standards in order to robustly sustain military tasks therefore had to follow another route. Dandeker expressed this situation:

The armed services confront a series of challenges to their unique culture. They need to develop a personnel strategy that does not damage operational effectiveness – or to make the services feel that they are permanently under attack from outsiders who do not fully appreciate the



strategic imperatives impinging on them. However, at the same time, the supportive links between armed forces and society must be cultivated. Doing so need not weaken, but can actually strengthen, the services. (Strachan 2000:185)

Resolution was provided by a skilfully conceived broad question which went beyond specific issues, such as just discussed, to set a framework upon which policy could be justifiably developed and upheld.

#### IV

#### The Need to be Different

Earlier it was explained that 1989 was the beginning of a new era in the history of the Army with the publication of *Design for Military Operations. The British Military Doctrine*. This set out the position that, for the effectiveness of the army, there had to be what Mileham, using an actual phrase found in this publication, described as “*complete mutual trust between commanders’ of different levels, down to and including corporals*”. (Alexandrou 2002:82. Italics in original.) *British Military Doctrine* links the successful performance of the army with its values. This ran like a golden thread in the emergence of the Military Covenant (Armed Forces Covenant) from this publication.

The identification of values as being of the utmost importance was made explicit in 1995 when the publication of *The Extent to Which the Army Has the Right to be Different*, subsequently known as the ‘Army Ethos Paper’, occurred. The full title of this paper was the central question upon which the Military Covenant was built. One of those who drafted the Army Ethos Paper was Patrick Mileham, then a Royal Tank Regiment officer. He explained that its principal task was to distinguish between what was essential to the army’s effectiveness and how this related to employment law and civilian personnel practices (Strachan 2000:244). As a result a statement was produced that subsequently became the cornerstone of the British army’s Moral Component of Fighting Power:

That spirit which inspires soldiers to fight. It derives from, and depends upon the high degrees of commitment, self-sacrifice and mutual trust which together are essential to the maintenance of morale.

This statement became known as the “Ethos of the British army” and, according to Mileham, it “proclaims the army’s ‘distinguishing function’” (Strachan 2000:243). It was incorporated into the first publication to contain the Military Covenant, *Soldiering - The Military Covenant* and went into the subsequent authoritative source of British army Doctrine, *ADP Land Operations* (146).

This identification of British army distinctiveness was also set out by Dandeker (Strachan 2000). He commented that ultimately what made the army different from other organisations and institutions is that it rests upon an ability to coerce people.

This is what makes military discipline – an effective structure of command for the giving and receiving of orders – quite different from other organisations in terms of the demands it places upon personnel. These demands include the obligation to train to kill and to sacrifice self; to participate in a military community where one works, lives and socialises with other service personnel; and, when necessary, a 24-hour commitment with risk of separation from family at short notice. (Strachan 2000:175)

It is this understanding that provided the context for the Military Covenant. It, together with a further Army publication, *Values and Standards of the British Army*, was the basis, or generator, of the army’s ethos. This means that the Military Covenant, and its successor, was essentially a means of enabling the British army to be an effective fighting force and lead, indirectly, to its efficiency in conflict. As Roberts expresses it: “Operational effectiveness is the core criterion upon which the British Army is judged and justified” (Strachan 2000).

Subsequently there was some sensitivity to the expression that the army had the “right” to be different. According to Strachan there emerged a trend to speak of the army needing to be different, rather than having a right to be so (Strachan 2000:xviii).

The use of moral values in this manner raises the question of means and ends. Torrance expressed this reservation; there is a danger that the British army’s moral thinking is limited to the level of pure functionality (Strachan 2000:207). While this is a danger, the use of the armed forces is at the discretion not of themselves, but of society as a whole, exercised by the Crown with reference to Parliament. Thus,

although the armed forces may remain morally and legally responsible for their own conduct, the higher questions concerning their use, remains elsewhere. This is illustrated by Clausewitz who shows that the military effort is part of a process that begins with whoever bears political responsibility.

... war is not a mere act of policy but a true political instrument, a continuation of political activity by other means ...war in general, and the commander in any specific instance, is entitled to require that the trend and designs of policy shall not be inconsistent with these means.  
(Strachan 1997:1)

Responsibility for military action lies ultimately in the hands of the Government. It is the task of the armed services to prepare themselves for war and to fight when it occurs. To do so, the services need to utilise the resources available. Whilst this clearly means physical assets it must mean moral resources too. The Armed Forces Covenant must be able to bear this weight.

## V

### The Utility of the Military Covenant

The Armed Forces Covenant, as the opening to this chapter indicates, had a significant political aspect. This is reflected in the Parliamentary process that accompanied its introduction (see Hansard 16 Feb 2011: Column 1026). However it is the 2005 Military Covenant, and the process that led to its formulation that has continued to carry the essence of the significance of the relationship between the nation and the armed services. Critically the initiative for the production of the 2005 version lay wholly with the Army. In other words, it fed into the Government through the political and administrative processes that connected it to the army and it is not something that the Government itself developed directly. This is a significant point. A case can be made for regarding the Armed Forces Covenant, and especially its predecessor, as a considerable political achievement by the British army.

Constitutionally, the British army has no role in formal politics; its commanders may not express views of a nature that is designed to influence the politics of the UK by favouring one set of policies or grouping over another. However, this has not prevented the British army from being political in other ways. For example, when a

member of the military acts as a commentator, often there will be an implicit political message. In the conclusion to his *The Politics of The British Army* Strachan writes tellingly as it involves the testimony of a significant politician:

Moreover, during the course of the last century, and particularly since 1945, the army's subordination to parliament has become a constitutional figment rather than a practising reality. ... 'There is no area of governmental activity', David Owen told the House of Commons in 1972, 'where parliamentary control is in reality less effective than in the area of defence.' (Strachan 1997:266)

This suggests that the influence of the military is stronger than commonly imagined. In the case of the Military Covenant, with its reference to the nation's responsibility to resource and sustain the army, a powerful position is established, even if this became more nuanced in the case of the Armed Forces Covenant. This is illustrated by the debate that took place about the resourcing of the campaign in Afghanistan during 2009, in which the then head of the British army General Richard Dannatt was often prominent, and in which the Military Covenant was often cited (*Daily Telegraph* 21 Aug. 2009).

The importance of this positioning of the army towards society is revealed when the role of public opinion, discussed earlier, is further considered. Smith (2006) argued that contemporary conflict is different from that of the Second World War, which, in many people's minds, formed the paradigm of how wars are fought. In that model, wars are between states and end when one side overwhelmingly prevails over another. Instead, Smith believed that a new epoch in how conflicts are fought had been entered. Struggles were less likely to be of the old, inter-state type but instead consist of conflict between ideologically motivated movements and non-state organisations, and opposing formally organised and led states, like the UK. In these conflicts, the role of the Moral Component in a wider and deeper way than conceived until now, is increasingly important.

The will to win is the paramount factor in any battle: without the political will and leadership to create and sustain the force and direct it to achieving its objective come what may, no military force can triumph in the face of a more determined opponent. On the battlefield we call this morale, the spirit that triumphs in the face of adversity – and that is crucial. At the political and strategic levels the reward is defined in terms of the political purpose and the strategic objective: the grand prizes. (Smith 2006:241)

Smith showed that in the conflicts of the new century there needed to be a line of wilful determination that flows from the people, through government and then to the battlefield. The Armed Forces Covenant is one means, and a very important one, where this is meaningful in the British context. The British army is the nation's army. For it to be an effective force, which means ultimately a victorious one, then it needs the will of its own people to strengthen it and to support it when difficult challenges are encountered. The army, therefore, in setting out the Covenant, created a moral, if not a legal, statement of this connection. It was an astute political achievement.

## VI

### Summary

This chapter, in setting out the development of the Armed Forces Covenant, has shown that there are in existence two related Armed Forces Covenants; the Armed Forces Covenant itself and the Military Covenant. The former version was largely a political response to the effectiveness of the Military Covenant as a device around which criticism of Government support towards the army could be mobilised. It was also a timely statement of support to the Armed Forces while they were undertaking active campaigns. In comparison, the Military Covenant has an army provenance, being more directly connected to the Moral Component of Fighting Power. This distinction is more than a minor one, although probably in commonplace discourse it is one whose subtlety was not observed. Due to its relative longevity, and deeper intellectual consideration, from this stage onwards it is the Military Covenant that will be chiefly considered, rather than its more recent cousin.

The Military Covenant has been introduced broadly from two directions. Firstly, security is an increasingly complex matter. Since the end of the Cold War and the emergence of threatening non-state entities like Al-Qaeda, the role of the Armed Forces has undergone new consideration. Secondly, accompanying this have been significant societal changes. British society has become increasingly liberal, which has led to a desire for greater openness and transparency in national life. The Military Covenant, as part of the emergence of British military doctrine, was an effective response to both these changes. It expressed the bond between the Nation

and the Army in a way intended to contribute to the army's effectiveness, by accommodating the British army to wider society while emphasising the unique nature of military service. Quite whether the state and the nation grasp the fundamental and visceral character of this bond will be explored in the next chapter.

## **Chapter Two**

### **The Biblical and Historical Background to the Concept of Covenant**

#### I

#### Introduction

The opening chapter suggested that the Military Covenant was a considerable achievement by the British army. In order to examine this there are two questions that can be posed to it, and its successor, the Armed Forces Covenant, that will help unfold its nature. Although what follows will, ultimately, stray far from these questions, they will serve to provide at least an initial place of anchorage. The first question centres on the detailed meaning of the Military Covenant; what is a covenant and how does it sit in the contemporary world? Secondly, consideration needs to be given to the assertion that underlies it; which is to do with the need to be different, and what follows as a result, and whether, in a political and social culture that speaks of fairness, this is just. This chapter deals with the first of these.

The Military Covenant is a succinct statement. It begins by stating plainly that military service can demand the ultimate of those who commit to it. Regardless of whether a soldier experiences trauma or not, a number of other sacrifices are inevitable; the needs of the nation and the army will come before a soldier's own concerns. In return, however, a soldier is entitled to fairness of treatment and respect. It is this, the service a soldier gives and the treatment he receives in return, that is the essence of the Military Covenant which, lest its purpose be misunderstood, is intended to make a key contribution to the sustainment of the army. In explaining the Military Covenant, a phrase occurs that requires careful clarification if its meaning is to be fully appreciated. The bond between nation, army and soldier, is described as follows.

It is a covenant, not a contract, and it is binding in every circumstance.  
(*ADP Land Operations*:146)

Despite its success, the extent to which the significance of this statement is appreciated is open to question. In particular, with its clear implication that the army is different from other aspects of national life, it is questionable whether it is something that can be upheld. Given the contending elements of public expenditure,

fields of government activity that yield more direct social goods than defence are more readily heard. However beyond these more immediate political concerns, there is a more substantial, if more reflective debate that centres upon the meaning of 'covenant'.

This chapter will suggest that the contemporary understanding of the Military Covenant is an impoverished one. At root, it will be suggested, this is because of a widespread misunderstanding of Christian (Jewish) theological concepts. The extent of this challenge will be set out in relation to the covenant-idea by outlining some biblical background and how one contemporary Old Testament theologian argues that such ancient texts can still be heard and meaningful in the modern world. It will also be shown that although the significance of the concept is hidden today, this has not been always the case: it was an important term in the sixteenth and seventeenth centuries, a period that can be characterised by upheavals and wars that arose out of religious difference that led to the emergence of thinkers who have played a role in the emergence of political theory that has shaped the modern world. It was from that period that the biblical covenant-idea fledged into a concept that has become part of the tool kit of political theory. Finally, it will be shown that amongst some thinkers and writers whose work is still active the idea of covenant is still proposed as a useful concept for consideration.

## II

### Contemporary Understandings of the Military Covenant

According to Elazar, who wrote a major four volume work on the covenant-idea, a covenant is:

A morally-informed agreement or pact based upon voluntary consent and mutual oaths or promises, witnessed by some transcendent higher authority, between people or parties having independent status, equal in connection with the purpose of the pact, that provides for joint action or obligation to achieve defined ends (limited or comprehensive) under conditions of mutual respect which protect the individual integrities of all the parties to it. Every covenant involves consenting (in both senses of thinking together and agreeing) and promising. Most are meant to be of unlimited duration, if not perpetual. Covenants can bind any number of partners for a variety of purposes but in their essence they are political in



that their bonds are used principally to establish bodies political and social. (Elazar 1998:23)

This definition is both authoritative and rich: while it certainly serves to provide a reliable meaning, it is also one that is not narrowly precise. It contains the terms “some” and “most” that indicate it is a general definition. Therefore it is one that, it may be argued, is fruitful in allowing the development of initially unforeseen meanings. This approach is important in the discussion that follows. While Elazar regards the application of a covenant as being a political act, it is a concept that is rooted, using his expression, transcendently, which is highly pertinent theologically.

In her article *Understanding the Military Covenant* Tipping begins by explaining what the Military Covenant is not.

... the term is often used in a very narrow way to encapsulate a multiplicity of welfare issues currently affecting the services which gives the impression that the Military Covenant is merely an agreement between the government and the armed forces. This fails to capture the true nature of the covenant - it is an implicit contract that exists between the nation and the armed forces. (Tipping 2008:12)

Whilst she is correct in rejecting the notion that the Military Covenant is essentially about welfare, she shows a limitation in explaining what it actually is about. The fundamental difficulty with Tipping’s approach is that she uses the term “contract” to describe it (Tipping 2008:13). In fairness, she only does so somewhat uneasily, as the passage from her paper indicates above. To emphasise her difficulty she explores the implications of what would happen if it was a formal contract (Tipping 2008:13) and concludes that the complexity of regarding the Military Covenant as a conventional contract makes such an arrangement unrealistic to operate (Tipping 2008:13). The issues involved are simply too difficult.

Her solution to understanding the nature of the Military Covenant is to turn to a specialised field of the Social Sciences.

What currently exists is described in management theory as a psychological contract, something present in all employment relationships alongside the formal written contract. (Tipping 2008:14)

Therefore an attempt to analyse the Military Covenant from a purely legal basis is unsatisfactory. In Tipping's view psychology provides a means of modifying a purely legal understanding.

Tipping's approach is followed independently by Walters. He wrote following the introduction of The Armed Forces Covenant and the Armed Forces Act 2011 which requires that the Secretary of State for Defence makes an annual report to Parliament on the vigour of the Covenant in the areas of health, education, and housing with discretion to comment on other matters. This is designed to provide a commentary on the Covenant's effectiveness. While this falls short of what Tipping indicated a contractual relationship requires, as there are no sanctions specified, it does suggest that the Armed Forces Covenant is partly intended to be a contract.

In his paper, *The Military Covenant: An Analysis of a Current Dilemma* (2012), Walters argues that there is a fundamental incongruity between what a covenant means and what is contained in the Armed Forces Covenant. For Walters, who was a serving RAF officer when he wrote his paper, the nature of military service, with its implicit sacrifices, requires a sense of vocation that is not usually found in other forms of employment. He believes that the Armed Forces Covenant shifts the emphasis too closely to a contractual form of employment. Various undesirable consequences follow: in particular, it raises the risk of a sense of entitlement towards goods and services that he fears could provoke hostility from civilians (Walters 2012:16). Walters' understanding of the meaning of covenant is a wide one. It embraces a sense of spiritual ambience (Walters 2012:11 & 29). Ultimately, however, he shares Tipping's view. He understands that the nature of the Armed Forces Covenant is to liken it ultimately to a "psychological contract" (Walters 2012:12).

Both Tipping and Walters identify the same difficulty. They are both aware that a covenant is not reducible to being a contract as conventionally understood, but they find themselves using the term with qualifiers, "implicit" (Tipping) and "psychological" (Tipping and Walters) in an attempt to ameliorate the limitation of which they are aware.

While Tipping and Walters must therefore be judged as, at best, only partially reliable commentators, they do however point in a direction that will be significant for what follows. When Elazar's definition of the covenant-idea was introduced a paragraph or so above, it was suggested that it was a general one, and so it follows that it is a concept that lends itself to use in a number of ways that may not initially be seen. Such applications, while they must be recognisable to Elazar's definition, also allow for some fruitful uses that are the result of reflection and adaptability.

To illustrate this, in recent times the phrase "soft power", coined by Joseph S. Nye in 1990 (Nye:1990), has entered the lexicon of international politics. Its meaning is to do with the sort of influence that is characterised by such things as cultural or language influence and other intangibles. It is distinguished from the "hard power" of military or economic strength. So while it may not be directly coercive, it is nonetheless still a means by which a country can gain traction in relation to another.

It is with this kind of subtlety that Walter's wrestling with the covenant-idea is involved. He significantly uses the concept of vocation to describe military service. Traditionally, this is a term that is ascribed to caring professions in fields such as healthcare, teaching and the church. It describes an inner and compelling sense that someone has that they are called (from the Latin *vocāre* 'to call') to pursue a particular profession. Vocation is often contrasted with career or profession: terms, perhaps unfairly, that are associated with ambition or a high salary as the purpose of work in a pejorative sense when compared to vocation, which is to do with personal fulfilment often at some cost. It can be argued that Walter's selection of the term to describe military service is a deliberate attempt to associate a set of qualities to it that distinguish it from other forms of activity. In other words, he wishes to heighten military service from the mundane or conventional associations of employment. This is an example of soft power at work. What Walters is doing, without relying on other possible justifications, such as the utility of the armed forces (hard power), is making a case that suggests that military service, because of the sacrifices it entails, is noble and meriting of special regard. This is a subversive manoeuvre. For what Walters has done is take a concept most usually associated with caring activities and professions and apply it to a different context to where it is customarily employed. As

a result he extends and deepens the concept of vocation. This is an approach that, it will be argued, can likewise be applied to the concept of covenant.

Elazar's definition of a covenant includes an element that makes it strong in terms of its significance. For example, a covenant involves a perpetual binding. It is not a temporary solution to a problem and therefore that is not merely pragmatic means of action. A covenant is a serious undertaking. Sacks argued that a covenant is a conscious act (Sacks 2007:109). However that emphasis, it will be shown, is balanced by what can be discerned about the origins of the covenant-idea. *The covenant-idea emerges from an organic process which, when it comes to be expressed formally, is lost.* There is a liminal quality to a covenant. When expressed formally, the organic understanding, perhaps manifested in an intense mutuality, becomes jeopardised.

### III

#### The Biblical Understanding of Covenant in the Old and New Testament

The unease with which Tipping and Walters handle the meaning of covenant is revealing. They are both aware that in addition to having a legal connotation, covenant carries an additional significance. They try to capture this when they describe it as a psychological concept. While it operates in such a manner, it is a description that does not to capture the essence of what a covenant consists. An accurate understanding rests not on insights chiefly provided by law and human science. To discover the heart of its meaning it is necessary to turn to an unfashionable source.

The origin of covenant lies in a subject that is usually disregarded or given a minimal role in contemporary matters. As Elazar suggests (1998:1), it is from Jewish and Christian theology that the meaning of covenant emerged and developed. It provided the basis for its subsequent use in social, legal and political theory, an understanding Elazar ascribes to the Reformation scholar and politician, Althusius, who, Elazar claims, regarded the Bible as containing the first and best design of a covenant (*Politica* 1995:xxxvi). Without this understanding an accurate use of the term cannot

be fully made. While there is not a direct link between the Military Covenant and organised Christianity, the Military Covenant nonetheless indicates the significance that Christianity has for the cultural heritage of the United Kingdom. The Military Covenant illustrates not just Christianity's pervasiveness, but also that it has utility.

Theologically for Christianity, the term 'covenant' summarises the action of God in Jesus Christ in the redemption of the world. It was explicitly used by Jesus at the Last Supper (Matthew 26.28) to describe the meaning of his death which, he said, was to create a new covenant. Although the term is here used in a fundamentally soteriological manner (for Christ's death changed humankind's standing with God), Jesus also attached a moral significance to his death that adds weight to the meaning of covenant. In Matthew 20:28, he indicates that the giving of his life is an act of self-giving, a quality that is to be characteristic of his followers. In John 15:12-14, Jesus uses his death to illustrate the depth of his love for his friends which should lead them to demonstrate in their conduct that they are his followers. More generally, the idea of covenant is something that lies implicit in the New Testament elsewhere; notably in the writings of St Paul. In Galatians 3, he discusses the relationship between Christians and one of the leading covenants of the Old Testament involving Abraham. Paul argues that Christ has not done away with this covenant, but that its basis is one of promise and faith, not promise and law. Therefore, given the centrality of covenant for Christians, anything framed using the term may invite their interest.

The reason for this can be found in the work of Tom Wright, a leading Christian theologian. For him, the covenant-idea was for Paul "a controlling theme" (Wright 2013:782), an approach that sits easily with the words of Jesus referred to in Matthew 26.28 above.

Paul stresses that what has happened in the gospel events has happened in fulfilment of the promises to Abraham, and has resulted in the formation (or re-formation) of a people who are bound in a common life as a kind of extension or radical development of the covenantal life of Israel. (Wright 2013:782).

Wright's approach is a thoroughly theological one, in which there is no hint of a wider application.

The purpose of the covenant was the way Yahweh sealed the intent to undo the multiple disasters of the fall, the flood and the idolatrous Tower of Babel.

The covenant that YHWH made with Abraham was the way of sealing this intent, binding this God to his promise and Abraham's family to this God, assuring Abraham of the 'seed' that would inherit the promises, the promises which were focussed on the land as the new Eden, promises which would be fulfilled by the exodus from Egypt as the great act of redemption. This dense confluence of themes – promise, family, land, exodus – resonated across the centuries and several varieties of Jewish life and thought, albeit with the question of where it would all end up. The covenant ... forms the essential and non-negotiable context within which the writings of Paul (especially Romans and Galatians, where Abraham plays such a central role, and Romans and 1 Corinthians 15, where Adam plays such a central role) demand to be read. (Wright 2013:795)

Wright's approach can be illustrated by his comments about Galatians 4.1-11, which has to be considered in the light of what Paul wrote in the previous chapter about the covenant relationship between God and Abraham established in Genesis 15. In that passage, God promises that from Abraham a countless number of descendants will follow. The focus in Galatians 4.1-11 however, although it has to be read with the Abrahamic covenant in mind, switches to the covenant that occurs in the Exodus account of the escape of Israel from Egypt. For Paul, the Abrahamic covenant between God and Israel is not a settled matter that applies only to Israel and about which nothing else can be said. The promise delivered to Abraham in Genesis 15 extends not just to Israel in the events of the exodus. There is, in other words, a further unfolding to take place, a future action that has a relationship to the Old Testament agreement but which is also a development. This is seen in Jesus Christ, whose coming has led to the promise of God to Abraham, honoured in the deliverance of Israel, being extended to the entire human race (see Wright 2013:656-57).

This new inclusivity leads to a highly significant outcome. According to Paul, because Christians are now counted as descendants of Abraham they are, through adoption, God's sons (Gal. 4.5). Following Paul closely, there is an intimate and personal relationship with God as the outcome:

Because you are his sons, God sent the Spirit of his Son into our hearts, the spirit who calls out, Abba, Father. So you are no longer a slave, but God's child; and since you are his child, God has made you also an heir (Gal. 4.6-7).

This *experience*, for this is what is being described as opposed to a cool and conceptual approach to religion, will come into significance later shortly when the conclusion of Nicholson's work on the Old Testament conception of covenant is considered.

Predominantly, it is in the Old Testament where the theological understanding of covenant plays its most visible role. Biblical Studies are therefore vitally important in revealing the roots of the covenant-idea. The *Encycl.clopaedia Judaica* suggests that the idea that there was a covenantal bond between a deity and a people was a special feature of the religion of Israel (*Encycl. Judaica* 2007:253). There has been detailed consideration stretching over decades around how this notion came to be what Eichrodt regarded as "the central concept by which to illuminate the structural unity and the unchanging basic tendency of the message of the Old Testament" (Eichrodt 1961:13).

The *Encycl. Judaica* defines covenant as a general obligation concerning two parties and sets out the variety of settings in which they are created. It could be created by an oath (for example Gen. 21:22ff, 26:26ff), by a solemn meal (for example Gen 31:54), by sacrifice (for example Ex. 24.4ff), or through an action such as the butchering of an animal and the passing of the parties between the sections (for example Jer. 34:18ff). While the etymology of the Hebrew word which is rendered as 'covenant', *berit*, is unclear, it is likely connected to binding (*Encycl. Judaica* 2007:249). The term *berit* is often using together with another Hebrew word which is translated as covenant, '*alah*. This combination suggests the idea of a binding oath (Gen 26:28, Deut. 29:11, 13, 20; Ezek. 16:59: 17:18).

The controversy over the origins of the biblical covenant is based upon the extent to which the life of ancient Israel was analogous to that of a modern state. It is a debate that silently underlies the article in the *Encycl.clopaedia Judaica*. The origin of the covenant is placed in two separate periods of time. The making of covenants in occurrences that are found in Genesis and Exodus, and which are dated to the second millennium BC, were "validated by sacrifices and holy meals" (*Encycl. Judaica* 2007:251). In comparison, the accounts of covenant making that are found

in Deuteronomy have been compared to examples that occur in Hittite and Assyrian sources that indicates the existence of a pan-cultural model that was widely used in the first millennium BCE (*Encycl. Judaica* 2007:251).

So, while there is a common understanding of a covenant as a binding, unchanging relationship, *how* a covenant was made and also the *type* of covenant are matters of contention. The covenants made with Abraham (Gen 15, 17) and David (2 Sam 7) can be designated “promissory” and concern the land and dynastic succession (*Encycl. Judaica* 2007:251). These covenants are set out as undertakings made by and wholly binding on God, with no conditions, although later modifications (for example 1 Kings 2:4; 8:25; 9:4-5) do introduce a qualification based upon the faithfulness of the people. This form of covenant resembles the model of Hittite and Assyrian “royal grants” (*Encycl. Judaica* 2007:252). In comparison, the covenant made between God and the people of Israel that is described in Exodus (Ex 19-24) and in Deuteronomy, resemble that of the suzerain-vassal type between an overlord and a people that is also, if confusingly, characteristic of the Hittites and Assyrians (*Encycl. Judaica* 2007:250 and 251).

These differences are significant when their relation to the debate alluded to earlier begins to come into view. A key participant in this was Mendenhall (*Encycl. Judaica* 2007:250 and Nicholson 2008:57), who focussed on the Hittite suzerain-vassal type as having a connection with the covenants found in the Old Testament. Such covenants began with a preamble in which the parties to the treaty were set out, a historical prologue followed in which one party established a position of moral superiority over the other and stipulations then followed, These concerned the behaviour of the covenanting parties with accompanying threats and sanctions should the agreement be broken. The next element was that copies of the terms of the covenant should be created and protected. From time to time these memorials should be recited as a reminder. Accompanying such events a religious ceremony might be enacted to give a deeper sense of solemnity. A significant consequence of this was that the covenant-idea effectively made Israel into an institution based upon law, corresponding in some way to a state.



This interpretation of Old Testament evidence is consistent with the ideas of Max Weber, the notable sociologist, who set up the context into which the ideas of Mendenhall fell according to Nicholson (1988). Weber explored the role that religion played in the state generally and argued that in the case of ancient Israel it was fundamental (Nicholson 1988:38).

In its special relation to God, Israel stood in contrast to all other nations, because of this very unique historical event and the unique conclusion of a covenant. Israel's special relationship to God was not merely guaranteed by God, but had been concluded with God as a party to it. The entire Israelite tradition unanimously traced its origins back to the concrete event assumed to have set the process in motion. (Weber quoted by Nicholson 1988:39)

Weber's thinking impacted upon a number of OT scholars who operated between the First and Second World Wars. They conceived a *historical* role for the covenant. According to Nicholson (1988), the most influential of these was Alt. In 1930 he published an essay that accepted the antiquity of 2 Samuel 7 (Nathan's dream of David's kingship) and 2 Samuel 23.1-7 ('last words' of David designed to secure the inheritance his descendents) which "had a specific religio-political function, that of legitimising the dynastic principle in the face of the charismatic principle of leadership which had characterized life in pre-monarchical Israel" (Nicholson 2008:45). Another who was likewise influenced was Eichrodt who his *Theology of the Old Testament Volume One*, argued for both the central importance of the Covenant but also for the setting in which it was enacted.

For it is in this concept that Israel's fundamental conviction of its special relationship with God is concentrated. The decisive consideration on this point is neither the presence nor absence of the actual term *berit*, as certain all too naïve critics seem to imagine ... but the fact that every expression of the OT which is determinative for its faith rests on the explicit or implicit assumption that a free act of God, *consummated in history*, has raised Israel to the rank of the People of God, in whom the nature and will of God are to be revealed. The word 'covenant', therefore, is so to speak a convenient symbol for an assurance much wider in scope and controlling the formation of the national faith at its deepest level, without which Israel would not be Israel. As an epitome of the dealings of God in history the 'covenant' is not a doctrinal concept, with the help of which a complete corpus of dogma can be worked out, but the characteristic *description of a living process*, which was begun at a particular time and at a particular place, in order to reveal a divine reality unique in the whole history of religion. Reference to this living process in every single paragraph of this work will not escape the attentive reader. (Eichrodt 1961:13-14 *italics added*)

Eichrodt presented the Old Testament idea of covenant as a dynamic and developing concept that informed and shaped Israel's relationship with God at every turn. Showing the influence of Weber, this was supported by the making of explicit but distinctive covenants that contributed to a developing tradition. This meant that by the 1950's there was a consensus about the purpose and origins of the Covenant. It was a historically conceived agreement between God and Israel that had been institutionalised using forms borrowed from neighbouring kingdoms.

However, as the *Encycl. Judaica* also mentions, the situation is more nuanced than those who followed Weber were seemingly aware. It comments that "the analogy [with Hittite and Assyrian treaty documents] is not complete" because "what is found in Exodus 19-24 is not a treaty, as in the Hittite documents, but rather a narrative about the conclusion of a covenant. Nevertheless, it is clear that the narrative is organised and arranged in line with the treaty pattern, which emerges in a much clearer fashion in Deuteronomy." (*Encycl. Judaica* 2007:250). This is a significant clue in an alternative understanding of the Old Testament background.

Nicholson is more sceptical of the connection of the OT Covenant with Hittite or Assyrian sources than the *Encycl. Judaica* (Nicholson 1988:81). He is concerned that the association of the Covenant with non-Israelite sources is a means of legitimising Israel as a political institution rather than as theological understanding of Israel. Instead of relying upon the Hittite and Assyrian treaties as the model for setting out a relationship that established Israel as a institution, Nicholson looks to circumstances beginning at the time of late monarchical period during the eighth century BC for the emergence of the concept and which was expanded considerably during the era of the Deuteronomic writers, who he dates as being from the late pre-exilic period into the sixth century (Nicholson 1988:191). So he dates the formalising of the covenant-relationship in the form found in the Old Testament to a later date than Alt and Eichrodt.

Nicholson is an advocate of the position that was held before the impact of Weber and that is associated with Wellhausen, who in 1878 published *Prolegomena zur*

*Geschichte Israels*. This advocates a *theological* origin for the Covenant between God and Israel which, in turn is consistent with an *organic* foundation.

Wellhausen's reconstruction of the history of Israelite religion led him to the conclusion that the presentation of Israel's relation with Yahweh in terms of a covenant was a late development and came about as a result of the preaching of the great prophets. In the period before their time and beginning with Moses, the relation between Yahweh and Israel is best understood as a 'natural bond', like that of a son to his father. (Nicholson 1988:4)

The proposal is therefore of an emerging relationship between God and Israel that, as a result of the preaching of the prophets, became formally expressed in the form of the covenant. This approach is therefore organic rather than formal. In *God and His People*, Nicholson challenges the Weber-Mendenhall approach by relying on a thorough and detailed examination of the evidence cited by its followers. Weinfeld, the author of the *Encycl.c Judaica* article referred to above, published a book in 1972 in which, according to Nicholson, he argued that Deuteronomy "preserved the classic structure of the political treaty as evidenced during the ninth to the seventh centuries BC" drawn from Assyrian and Sefire treaties from the first millennium BC (Nicholson 2008:65). Again relying on Nicholson's account, in order to substantiate his argument Weinfeld turns to two difficulties in connecting Deuteronomy with his chosen sources. He begins with the historical content of the prologue of Deuteronomy, which is a feature of Hittite documents of the second millennium, not of his chosen Assyrian texts of the first millennium. He explains this by an absence of information rather than anything more fundamental (Nicholson 2008:66). A second difficulty is that the purpose of the law codes in Deuteronomy and the Assyrian and Sefire texts differs: the Old Testament book is concerned with a system of law to support the people while the other material is focussed on their subjection as vassals (Nicholson 2008:67). Weinfeld explains this by suggesting that the Deuteronomic material is a composition based upon older texts that were compatible with the author's intent (Nicholson 2008:68).

Despite such arguments, Nicholson is critical of the Weber-Mendenhall thesis. He cites the work of McCarthy who rejected the influence of treaties and instead favoured an approach which saw in Exodus 24.1-11 the emergence of a ritual as the

basis for a Covenant that is based upon the adoption of Israel as God's people (Nicholson 1988:60 and 69). Nicholson refers to McCarthy's view that the Decalogue does not fit the treaty pattern; there is no list of blessings or curses and there is only a limited historical prologue (Nicholson 1988:68 and 69). He concludes:

... for a time research into the possible influence of suzerainty treaties upon Old Testament covenant texts seemed to offer striking results, in reality it has yielded little that is of permanent value. The resemblance in form between the Sinai pericope or the decalogue and Hittite treaty texts of the second millennium BC was effectively exposed by McCarthy to be merely superficial, and it turns out that the same is true of the supposed dependence of Deuteronomy upon treaties of the first millennium. As to the use in Deuteronomy of a range of terms also employed in these treaties, it is unlikely that this is due to borrowing on the part of the Deuteronomic authors from treaties; it can be much more plausibly explained as the result of mutual use by treaty scribes and Deuteronomic writers of common sources – the familiar settings of everyday life. (Nicholson 1988:81)

This discussion may appear a little esoteric. For the non-specialist, it may be difficult to see whether there is much at stake beyond scholarly reputation. However for Nicholson there is an issue at stake that is of the utmost importance: the nature of the relationship of God to ancient Israel and what that reveals about the character of God. It is because of this that Nicholson dismisses McCarthy's restatement of a treaty-origin for the Covenant (Nicholson 1988:79 and 80). For Nicholson a covenantal relationship between God and Israel that is reflective of the suzerain-vassal type between an overlord and a people is highly unlikely. After examining and criticising such an approach, he states:

A further question can be raised at this point: so far as Israelites in general would have been familiar with suzerain-vassal relationships, would such an analogy for their relationship with God had any appeal of an apt or desirable nature, especially when Assyrian suzerains had subjected and despoiled the land and people? Notwithstanding all references in the treaties to the 'love' of suzerain for vassal and of vassal for suzerain, to the suzerain as 'father' and the vassal as 'son', such relationships were surely hardly ever like that, vassals did not as a rule 'love' those who conquered, subdued, and dominated them – there is abundant evidence for this in the history of Israel and of the ancient Near East – and the very language of intimate and familial relationships in the treaties reflects not the reality of the relationships, but rather the political, strategic, and economically motivated endeavour of suzerains to maintain, with the least amount of trouble, the subservience of those whom they had conquered and regarded as subject to them. To tell Israelites that Yahweh 'loves' them in the same way as a suzerain (e.g. Ashurbanipal or

Nebuchadrezzar) 'loves' his vassals, and that they are to 'love' Yahweh as vassals 'love' their suzerains, would surely have been a bizarre depiction of Yahweh's love of, and commitment to, his people, and of the love and commitment with which they were called upon to respond. (Nicholson 1988:79)

He then continues:

The reality is surely that terms such as these and others, supposedly derived by the biblical writers from their knowledge of treaties, belonged in the first instance to familiar settings of everyday life, and needed no treatises to mediate them or give them a special nuance. There is no need to believe that the biblical authors were dependent for such terminology on anything other than these same everyday settings. The 'father-son' analogy is an obvious example... (Nicholson 1988:79)

This understanding of the covenant by Israel is the conclusion of Nicholson's work. Significantly, it is an approach with which a link can be made with the earlier discussion of Wright to whom, it was explained, a return would be made. This connection is in two ways. Firstly, like Wright, Nicholson sets out the view that the concept of the covenant was present even when it was not explicitly being mentioned: it was part of Israelite religion and the vernacular of their faith. Likewise, it was in Wright's view "a controlling theme" for Paul (Wright 2013:782). The covenant-relationship between God and the church was something that operated in a proactive but hidden manner, in much the same way as for Nicholson when considering God and Israel, as a living and active assumption. The second link between Wright and Nicholson is that both characterise the bond between God and the people as being one of a father-son relationship. Although they wrote fifteen years apart, this is an insight that arises out of a shared Christian experience of God. Both are united by a dynamic view of God that reflects the Christian tradition. *Nicholson is writing about the Old Testament covenant-idea from a Christian perspective* even if this is not discussed. Possibly Nicholson is seeking to identify a consistent nature for God that can be seen in both Old and New Testaments. In comparison, the approach of Mendenhall and those who are associated with him, with their notion of a God who dominates and subjugates the people, is not one that is reconcilable with the "God of our Lord Jesus Christ" (Ephesians 1.17).

Taken together, therefore, the work of Nicholson and Wright shows that there is a theological connection between the Old and New Testaments over the meaning of

the covenant-idea. There is a consistency in God's nature and dealings in the Christian Bible as a whole. The emergence of the covenant-idea as an organic process that was reflective of Israel's experience of God in the Old Testament is compatible with that experience of God which is found in the New Testament.

This is an important matter. The prominence of the covenant-idea in the Old Testament is more significant than that found in the New Testament. The references to it are proportionately greater. However as an idea it is still central to the New Testament, which is about the establishment of a *new* covenant. The binding quality of a covenant is therefore deepened by its New Testament usage. This means that the Old Testament style formulation of the Military Covenant is not inimical to New Testament theology. The strength of unity between the Testaments means that the Old Testament use, in a Christian culture, will have resonances that are different (deeper) to a purely Jewish approach.

This conclusion is significant for the Military Covenant, whose manner of emergence was shown in the opening chapter to be an organic one. For, as is implicit in the discussion of the above concerning Tipping and Walters, if the Military Covenant cannot rest upon law, because it is not a contract, its potency is provided by the sort of compunction that emerges morally and relationally. This understanding of the covenant-idea is entirely consistent with what Nicholson argues about the biblical background: love cannot have any force other than that which arises out of the mutuality and inter-changeability of the relationship between lover and beloved. Thus, the covenant-idea is extended from the more limited notion of it being a formal agreement that emerges out of an arrangement between the parties involved: it is also to be understood as the culmination of a natural relationship that matures into formal expression after a lengthy process. It is like the example of soft power mentioned earlier. As a discreet practice, soft power has long existed. It is only in recent times that it has become more widely recognized as an aspect of power and, thus, recognised formally.

As in the parenting analogy that Nicholson relies upon to illustrate the sort of experiences that gave rise to the covenantal relationship between God the Israel, the

parties to the Military Covenant are capable of being interpreted figuratively. The nation it is asserted, merits service, and its soldiers, who must forgo some liberties, provide it by the performance of their duty. In return, the nation makes certain promises concerning the treatment of troops and their families. The moral nature of the Military Covenant is asserted from time to time in national life, not least with the commemorations that occur on Remembrance Day. However the basis for this is not principally a formal matter. The links between the parties that are involved in the Military Covenant are more long-standing than the actual formulation of the Covenant, as the opening chapter shows. Elazar expresses this view when he discusses the role of the covenant-idea in the Old Testament.

Given the problematics of the biblical account for historians, this means we can say very little about what came first and what came last, what was divine and what was human, but the Bible does give us a rather complete sense of the covenantal dimensions of Israelite life – cultural, ideological, institutional, and behavioural – and makes a very convincing case for the extraordinary degree in which the Israelite polity and the society it shaped was thoroughly covenantal. (Elazar 1998:13)

The chronological distance between the Old Testament and contemporary public policy is huge and to which the analysis offered by Tipping and Walters is testimony. The fact that they do not refer to the theological background for a truer understanding is not due to a deliberate intention on their behalf. It is an indication of a problem in public understanding.

This is something that is recognised readily by academics and others who seek to relate texts from the past in order to enhance understanding of the present. It is, indeed, what Paul does with Old Testament passages in the Galatians passage that Wright focused upon earlier: he takes an episode from the Book of Genesis and more generally from the Book of Exodus, to show how in Jesus Christ the covenant-idea applied to Jesus Christ. Theologians continue to undertake with this activity through a branch of study called Hermeneutics.

Moberly in *Old Testament Theology* (2013) presents an approach to this work through the idea of “recontextualization” (Moberly 2013:157). This is the view that the suggestion that a text needs to be interpreted in its context is considerably complicated by such questions as “Which context?” and/or “Whose

context?” (Moberly 2013:155). Moberly has in mind the use by Christians of Old Testament texts (and therefore of the Jewish faith) which therefore involves a variance between their original and modern usages in how they are understood. He illustrates this by referring to the American Jewish scholar, Jon Levenson (Moberly 2013:156f) who argues that any text, sacred or profane, has not just a “context of origin”, but also a literary context too. Ancient texts are used in differing times, such as the medieval or a more recent time. This additional use needs to be taken into account whenever the text is considered: every usage may have an implication for each subsequent use of that text. Moberly comments:

Levenson recasts a familiar preoccupation of biblical scholars, concerning the difference between what the text meant in its ancient context and how it is to be understood now, into the issue of differing contextualizations of the biblical text. (Moberly 2013:156)

Closely related to Levenson’s work is that of his contemporary, Brevard Childs. Childs, according to Moberly “is clear that taking seriously the plurality of contexts within which biblical texts are read is a way of retrieving, via significant reconceptualising, the kind of approach that is needed to do justice to the continuing scriptural function of the ancient texts.” (Moberly 2013:157)

The contributions of Levenson and Childs lead Moberly to conclude that recontextualizing a text so that not just its historical setting but also subsequent uses are taken into account when discussing its meaning is entirely right.

For the basic issue – that some texts depict significant content with terminology having a semantic potential that can be realized in more than one way, according to interpretative purpose and context – in principle characterizes all texts that come to be recognised as classics and are read and appropriated in a wide variety of contexts. (Moberly 2013:158)

He then goes on to make a crucial remark that draws the discussion of the biblical origins of the covenant-idea in to this idea of reconceptualization.

The point is that to claim that the meaning of Israel’s scriptures may vary according to context is not a matter of special pleading by the Christian theologian, but *a recognition of certain facets of the nature of texts as texts*. (Moberly 2013:158 italics added for emphasis)

Moberly illustrates the meaning of reconceptualization by his treatment of the Shema (Deuteronomy 6:4-9) which he deals with after providing an introduction to the problems of its interpretation that closely follows the comments above. Moberly sets



out three ways in which the Shema can be understood. He summarises the first as “Living Tradition as Context for Interpretation” (Moberly 2013:10). This is the idea that understanding a text means considering it in the context of those who make use of it. In the case of observant Jews, the Shema is axiomatic in their definition of who they are: as Moberly puts it “The Shema still functions today as a fundamental articulation of the responsibilities of Jewish life and thought” (Moberly 2013:12). However, it is not just Jews who make use of the Shema. Christians too, Moberly shows, have drawn upon it to refute heretical doctrines and, because of Jesus’ own use of the Shema in Matthew 22:37-40, as a resource for confessional purposes of creed and conduct (2013:12-14). The second way of considering a text involves “Point of Origin as Context for Interpretation” (2013:14). This is arguably the most straightforward way of interpreting a text as it involves locating the historical context of origin and allowing that to determine how the text in question should be understood. In the case of the Shema:

Given the predominant consensus that the late seventh century BC is the period in which Deuteronomy, or at least an early version of the book, should be located, the concern becomes to articulate a late monarchic context that makes sense of Deuteronomy’s declaration about YHWH. (Moberly 2013:14)

Moberly then offers two applications that follow from this. The first one resembles the Weber-Mendenhall approach so heavily criticised by Nicholson: the Shema was a religio-political attempt to create Israel (Moberly 2013:14), while the second places it as a feature of King Josiah’s reforms (Moberly 2013:15). The difficulty with such attempts to set out with confidence the setting and intention of the Shema is “the strongly conjectural nature of such scenarios: however plausible they seem, these apparently solid bricks are comprised of only a few straws.” (Moberly 2013:15).

The third approach, and which Moberly favours, has implications for how the Military Covenant, is considered. Introduced as “The World of the Text as Context for Interpretation” (Moberly 2013:17), Moberly explains that the key issue is the construal of context (Moberly 2013:17). Texts, such as the Shema, have more than one context, each of which needs due consideration.

These different perspectives, or “contexts,” should be carefully distinguished and not prematurely conflated. Certainly the way in which one reads the world within the text can and should be appropriately informed and nuanced by one’s best guesses as to the likely world behind the text. Yet to collapse the former into the latter is not to take seriously

the dynamics of the text; it also risks reducing the mode of its expression ... into little more than a covert, and quite likely manipulative, form of religiously inspired manoeuvring. (Moberly 2013:17)

What Moberly advocates is an approach which requires judgement and balance. He identifies three contexts, “the world within the text”, “the world behind the text” and “the world in front of the text”, which, in the case of the Shema, is “a continuing people of Israel that understands itself to be addressed by the text.” (Moberly 2013:18)

The significance of this for the purpose of the Military Covenant is that the huge chronological gap that exists between the concept of covenant which is found in the Old Testament, and that of the Military Covenant is closed. Moberly’s notion of reconceptualization is a device for bringing an idea that is demonstrably very ancient into the present in a way that shows it still is potent. It is a means by which the concept of the Covenant can be used creatively in a context which is not only contemporary, but also a secular one. Something like this approach is reflected in Elazar’s comment that the “scriptural account ... is not comprehensive history but rather a series of moral case studies ....” (1998:11). The implication is that the Old Testament material is a normative source for contemporary considerations about covenant.

Such an approach, it may be argued in passing, is reminiscent of how the thirteenth century Magna Carta operates in relation to the constitutions of those countries that look to it as part of their heritage, such as the UK and the United States of America. While is not used in modern times as a living text, it still continues to operate beneath the surface of contemporary discussions as a moment when fundamental ideas about the rule of law were expressed in a way that has proven critical for developments since. Present arrangements for contemporary political culture and discourse are connected to sources that are hidden from the eye of most people, a conclusion that is applicable to the covenant-idea. This argument is consistent with the way that classical thinkers should be approached, according to Sacks and which will be set out shortly.

## IV

### The Sixteenth and Seventeenth Century Understanding of Covenant

Although the origins of the covenant-idea rest in the Old Testament, even if its role in the New should not be forgotten, the crucial era for the concept's entry into Western political culture is the period of the sixteenth century, when it played a significant role in the upheavals of that era because a number of Reformation thinkers drew heavily upon it. "The road to modern democracy" according to Elazar "began with the Protestant Reformation in the sixteenth century, particularly among those exponents of Reformed Protestantism who developed a theology and politics that set the Western world back on the road to popular self-government, emphasizing liberty and equality. (Elazar *Politica* 1995:xxxv). As illustrative of these thinkers, the work of Mornay, Althusius and Grotius is noteworthy, although other writers also made contributions.

Philippe du Plessis Mornay is attributed with writing the pseudonymously published work entitled *Vindiciae Contra Tyrannos* in 1579 and written, critically, according to O'Donovan (1999), within a few years of the St Bartholomew's Day Massacre as a response to it. This book described a system of government in which the power of the king is curtailed and subject to the will of the people (O'Donovan 1999:711). Drawing explicitly upon the Old Testament to provide a normative model, Mornay produced a system described as "an ingenious blending of Old Testament covenantal and theocratic themes with natural law, Roman legal arguments of various stripes ... furnishing a synthesis of unprecedented scope and complexity" (O'Donovan 1999:711). The outcome can be reasonably called a social covenant in which the monarch and the people were bound together, under God, in a mutual relationship in which each had a distinctive role to play. This is expressed by Mornay when, after setting out what he understands to be the terms of the Old Testament understanding of covenant, wrote:

Now although the form both of the Jewish church and kingdom itself be changed, for that which was before enclosed within the narrow bounds of Judea could be dilated throughout the whole world; notwithstanding the same things may be said of Christian kings, the gospel having succeeded the law, and Christian princes being in the same place of those in Jewry. There is the same covenant, the same conditions, the same punishments,

and if they fail in the accomplishing, the same God Almighty, revenger of all perfidious disloyalty; and as the former were bound to keep the law, so the other is obliged to adhere to the doctrine of the Gospel, for the advancement whereof these several kings at their inaugurating do pledge themselves first and foremost. (O'Donovan 1999:715)

Mornay's ideas perhaps represent the high-water mark for the use of biblically based covenantal thinking in the arrangements of the state. However, his ideas were significant for another reason. Although he claimed that he was not writing an overtly political book (Garnett 2003:xxi), his work shared with *The Rights of Magistrates* (1574) by Theodore Beza and *The Rights of the Crown of Scotland* (1579) by George Buchanan, a justification for, in certain circumstances, regicide (O'Donovan 1999:717). Known as monarchomachism, it was held to be a just act to overthrow a monarch if he failed to maintain his covenantal responsibilities. This was a time of severe political upheaval in continental Europe, and England was not exempt. These ideas were in circulation in the seventy years before the execution of King Charles I in 1649. John Milton, the celebrated author of *Paradise Lost*, wrote *The Tenure of Kings and Magistrates* (1650) specifically to justify the King's execution while advocating a covenantal view of society (Luxon 2009).

A second figure who shows the potency of covenantal thinking in this era is Johannes Althusius (1557-1638). Described as possessing an "original blend of organic, covenantal, constitutional, and pluralistic features, he is often seen as "the transitional figure *par excellence*, straddling late medieval and early modern developments" (both O'Donovan 1999:757). His greatest work was *Politica methodice digesta*, first published in 1603 but enlarged in 1610 and 1614. This was a systematic theoretical account of politics that he applied in practice in Emden, a city in modern north-west Germany where he was a significant resident and office-holder (Carney *Politica* 1995:xi). According to Elazar, *Politica* "presented a theory of polity-building based on the polity as a compound political association established by its citizens through their primary associations on the basis of consent rather than a reified state imposed by a ruler or an elite" (*Politica* 1995:xxxv) According to O'Donovan, Althusius' "distinctive principle is that *all* social union, as well as political union, is federal or covenantal" (O'Donovan 1999:758). This is something that he shares with Mornay. However his sources extend to embrace Classical and

Humanistic voices as well as Biblical ones, which distinguish him from earlier writers (see O'Donovan 1999:758).

According to *Politica*, human beings are so vulnerable that they rely upon forming associations for their preservation (O'Donovan 1999:760). It is by performing co-operatively that people can develop the benefits that follow such corporate living (O'Donovan 1999:761). According to Althusius, "Politics is the art of associating men for the purpose of establishing, cultivating and conserving life among them. Whence it is called 'symbiotics'" (Carney *Politica* 1995: xv). This pattern of behaviour is described by him as "covenantal" (O'Donovan 1999:761) and enables "whatever is appropriate for a comfortable life of soul and body. In other words, they are participants or partners in a common life." (O'Donovan 1999:760). From the basis that this provides, not only what he calls 'private' but also what may be regarded as 'public' arrangements follow (O'Donovan 1999:761), even to the extent of being the origin of the highest offices of state (O'Donovan 1999:765-6).

However, while the ideas of Mornay, Althusius and others, were influential, events were taking place that led to them being superseded. The Thirty Years War (1618-1648) and the Eighty Years War (1568-1648), conflicts in which Catholic and Protestant armies devastated much of Europe, led to the Peace of Westphalia, a series of treaties signed in 1648. Based upon the principal of the sovereignty of the state, this settlement, in general terms, brought European conflict in which religion played a leading role to a close. The Papacy was curtailed from interfering in the affairs of states, as had hitherto been the situation. Accompanying these practical changes was development in political theory. While covenantal theology was at the height of its influence, there was taking place the renewal of an older, pre-Reformation tradition occurring which would lead to a different direction to that set out in books of Mornay and his co-religionists. This led to a more subtle manner in which covenant came to be understood and the emergence of the modern form of political philosophy. Scripture was seen less as an authoritative source than the work of classical thinkers from ancient Greece and Rome. Indeed Hall (1997) is clear in wishing to distance the work of Calvinist theorists from that of secular writers, whom

he associated with the Enlightenment. Elazar attributes the decline in knowledge and use of covenant to the rejection of scripture as authoritative (1998:12).

Crucial in illustrating this is the work of Hugo Grotius (1583-1645) who in contrast to the work of the Calvinists, had a more liberal approach to Scripture. According to Zuckert (1994), Grotius strove to “free politics from Scripture” and place it on a basis provided, in part, by natural law (Zuckert 1994:122). This view rests upon a comment he made in the *Prolegomena* to his best known work *The Law of War and Peace* (1620) where he suggests that there are rights that exist in nature and thus independent of God. Grotius writes:

These observations [on rights] would have a place even were we to accept the infamous premise that God did not exist or did not concern himself with human affairs. (O’Donovan 2009:794)

In the main part of the book he develops the idea that there are three types of law; firstly, that of nature, which bestows upon human beings rights that originate from their nature, secondly, God, who has revealed things that human reason cannot attain (both O’Donovan 2009:794) and, thirdly, nations, which is the mutual consent between societies in order that they may be enabled to have their own administration (O’Donovan 2009:795). Of these, as already indicated, the most certain is the law of nature. Both the tone and content of Grotius is very different to that of Morney. In contrast to the ideas of the Calvinist Morney, his approach to where the state’s power comes from is different. In another important book, *Commentary on the Law of Prize and Booty* (1625), instead of it being due to a relationship with God, he posited the view that the state arises from individuals who collectively agree to its establishment. This means that the state can appoint rulers who bear the authority of their office to dispense justice and the other benefits that the state can confer.

O’Donovan is significantly less categorical in seeing Grotius as a figure who so clearly marks the separation between the Reformation and the early Enlightenment. He argues that the statement that seems to make the law of nature autonomous must be read within the wider setting of Grotius’ book which is redolent of Christian belief (O’Donovan 2009:7887ff).

According to Zuckert, Grotius' ideas were popular in England during the mid-seventeenth century (Zuckert 1994:104). This suggests that he was known to the two principal English thinkers of that era, Thomas Hobbes (1588-1679), already mentioned, and John Locke (1632-1704), who are the seminal thinkers for two distinctive approaches to political philosophy, something discussed later.

Allowing O'Donovan's contention that Grotius is not the figure who makes the break between Reformation and Enlightenment thought, it is still nonetheless clear that with Hobbes and Locke, a different, arguably secular, intellectual milieu had been entered. Given that modern political theorists unquestionably look to Hobbes and Locke as influences in forming their own ideas, it may be thought that the theological tradition of federal theology has largely given way. However Jürgen Moltmann's 1994 paper *Covenant or Leviathan? Political Theology for Modern Times* attempted to reinstate its usefulness. Moltmann returned to the covenant tradition of the sixteenth and seventeenth centuries to address the contemporary matter of the government of Europe. He began by stating a problem. If one solution to Europe's security is to allow the emergence of a 'strong state' that can protect the citizenry, who in turn is going to police the state? The danger is that a Leviathan will emerge which will endanger civil and political liberties (Moltmann 1994:19). 'Leviathan' is the name of the famous work by Hobbes in which he argued that a powerful ruler or state was a necessary bulwark against the sort of chaos he associated with state of nature, perhaps experienced in the English Civil War. As an antidote to this possibility he proposed that the ideas of the monarchomachians were reconsidered, as their opposition to tyranny might be timely. Moltmann is attracted to Mornay's *Vindiciae...* as it argued for a federalist-democratic state using the biblical foundation of covenant (Moltmann 1994:22). He compared this approach with that of Hobbes as a representative of the secular tradition. He expressed his conclusions:

1. The Leviathan image of the State presupposes a negative anthropology in order to legitimate a positive theology of power, authority and sovereignty. Human beings are evil by nature, chaotic, and therefore need a strong State to protect them from other human beings and from themselves. One normally uses Augustine's doctrine of original sin for this negative anthropology.
2. The covenant idea of the State, on the contrary, presupposes a positive anthropology in order to legitimate a critical theology of power as well as democratic institutions for the control of power. (Moltmann 1994:33-4)

This use of the covenant-idea as the basis for ordering the life of the state is something now hidden in Britain. However this was not always the case. A concept whose origins are theologically developed or, to use a term from the opening of this chapter, fledged to become a positive feature of political theory. This happened through a transformative era in European history when it was a leading idea. Perhaps, as that time was not historically an especially happy one, it fell from view as Enlightenment thinkers established the more fundamental basis for modern political theory. However, as Elazar argues in *The Covenant Tradition*, the concept played a derived but still significant role in the development of the United States (Allen 1999:162). The work of Moltmann is an indication that it remains an idea that still finds a voice in Europe even if, using a categorisation used by Elazar (introduced more fully later), its application in the ‘hard’ sense of someone like Mornay, has been extinguished.

## V

### Contemporary Writing on the concept of Covenant

Moltmann’s use of the covenant-idea is not as isolated as its use above may indicate in contemporary writing. There are a number of other modern theologians and political theorists who can be lined with him. While their foundations in Biblical and Reformation eras are now hidden in a way that other sources are not, such as Enlightenment thought, the covenant-idea is still a fruitful concept. It connects the parties involved in an enduring serious manner that no other concept, such as a contract, matches. It follows therefore that while someone who is not persuaded by the general truthfulness of the Christian faith cannot dispense with it, without creating a significant conceptual gap. Thus the covenant-concept is a practical means whereby the ‘good’ of society is upheld. In turn this leads to the creation of possibilities for co-operation and progress in matters of public life that connect religious and secular perspectives. This will become a contention of this thesis later.

Sacks, whose views will be considered later, expressed this accurately when he argues that the Bible can be used as a political text.

Whether we are religious or secular, we tend to think of the Bible as first and foremost a religious book. This is precisely *not* what I want to explore



here. We still turn for inspiration to Plato and Aristotle on politics, education and society, even though we do not share many other aspects of their mental world. We do not believe in Greek myths ... We can separate out, as it were the politics from the metaphysics. (Sacks 2007:96)

Theorists who have written about covenant come from both the Jewish and Christian traditions. Foremost amongst Jewish writers on the use of the covenant-idea is Daniel J Elazar, who produced several major studies on the political significance and use of the covenant-idea until his death in 1999. The most significant of these are the four volumes of his *The Covenant Tradition in Politics*.

In his *Covenant and Polity in Biblical Israel* (1998), the first volume, Elazar describes the biblical origins of the covenant idea in which “an omniscient God offers humanity a series of binding agreements, creating a people that is capable of doing righteousness and justice” (Allen 1999:161). He sets out his view that it is a major principle in political science (Elazar 1998:53). For him, “there is hardly a single covenant in the Bible that does not have strong political overtones or undertones” (Elazar 1998:78). He explains that it is God’s “grand design for humankind” (Elazar 1998:91) and follows the evidence that it is essentially a concept that emerged in the history of Israel with antecedents from other cultures (Elazar 1998:24). Although it has this theological background, the concept is valuable because it achieves a synthesis between political justice and political behaviour to produce a practical outcome (Elazar 1998:19). He is so convinced of its importance that he sees it defining of whole societies (Elazar 1998:20 and 21). This approach indicates that Elazar is not simply an academic: there is a sense of commending the covenant-idea as a practical political tool. In certain parts of the book he argues that it has a particular role in the foundation of those states that he describes as a “new society”, such as the USA and Israel post 1948 (see Elazar 1998:48ff). He also indicates that it has a more diffuse influence: he writes about the explicit use made to it during the sixteenth to the eighteenth century’s. He refers to the use that Reformed theologians of the post-Reformation era made of the covenant-idea and that this use gave way to secular use by Hobbes, Locke and Spinoza (Elazar 1998:26). Concerning this, Allen in her extensive review article comments:

Tracing the covenant tradition from federal theologians of the sixteenth century – “the second great age of covenantal politics” – through

seventeenth century works of Reformation theology and politics, Elazar emphasizes the distinct contributions of Henrich Bullinger, Ulrich Zwingli, John Calvin, and Johannes Althusius to political expressions of covenant. (Allen 1999:161)

Volumes Two to Four of *The Covenant Tradition in Politics* show how “later generations secularize this covenant ideal, reformulating the balance of biblical notions of freedom and restraint first as “liberties and obligations,” then as “rights and duties” and, ultimately, as civil and human rights. The source of their covenantal efforts, as Elazar makes clear, is nevertheless the biblical pact” (Allen 1999:161).

Glen A. Moots in his *Politics Reformed* considers Elazar as a key contributor to the contemporary understanding of the covenant-idea (Moots 2010:143). He fastens upon Elazar’s own description of the covenant-idea in *Covenant and Polity in Biblical Israel* by describing it as a “world-view” (Moots 2010:144), a characterisation that is notable because it indicates that it is a perception of the world that is fundamental in its significance.

Moots continues by showing that Elazar argued that there are two forms in which covenant can be considered; strong and weak (Moots 2010:144). In its strong form it was “orthodox and religious” but obsolete. However in its weak form, which relied on an implicit religious basis, it continued to make a contribution by providing a connection between politics and morality (Moots 2010:145).

As reciprocal instruments, covenants and compacts bind their parties “beyond the letter of the law.” Contracts tend to be private devices and not the public documents that political theorists allude to when they generalize the foundations of constitutionalism as “social contract theory.” Covenants, even more than compacts, introduce a morally binding dimension above the legal dimension. Covenants are also distinguished from compacts and contracts by the belief that God is a guarantor of, or a direct party to, the relationship between parties in the covenant. (Moots 2010:145)

Even under the arrangement of a weak covenant, the connection between God and the other parties involved was a significant one because it contributed moral coherence and unity. These were more substantial characteristics than found in the secular and individualistic character of contract (Moots 2010:145).

For Moots, the great value in this is that it established a helpful conceptual tool in distinguishing between covenant and contract (Moots 2010:146). It heightened the significance of a covenant by connecting it to the divine to legitimise it and provide its moral base. Even for a religious sceptic this transcendent quality can have genuine significance as a symbolic device with a widespread application. Moots argues that the covenant-idea has a universally binding quality that places it at the heart of a healthy community which, in turn, gives life to the state (Moots 2010:160). The Military Covenant is a precise demonstration of this. While the point of transcendence is not God but the nation in the Military Covenant, this secularisation is a re-expression of the older understanding and has a wholly different nature to that of a contract. This is something that Tipping and Walters failed to grasp: although they recognised that the Military Covenant has substance, they failed to appreciate that the theological origins of covenant lend a seriousness that other forms of analysis cannot provide.

A society that has forgotten its antecedents, including its Christian ones, means that a proper understanding of itself is inevitably lacking and that a re-acquaintance is necessary. From a British Jewish perspective, Sacks in *The Home We Build Together* (2007) argues for this, even if his discussion begins from a different place to the one set out above. For Sacks, the recovery of the covenant-idea is not so much because it has been lost due to the emergence of secular thinking, but that multi-culturalism has failed and a new basis needs to be found if the health of society is to be recovered (Sacks 2007:3 and 5).

Sacks argued that there is a fundamental conflict between liberalism and multi-culturalism (Sacks 2007:19). He points out however that they share on thing in common.

Common to both is that they see the relationship between citizens and the state are purely contractual. By the late 1980s the idea that a nation had a dominant culture, reflected in its laws and institutions, had quietly died. Political parties no longer represented different visions of the good. Daniel Bell called this 'the end of ideology'. In the new dispensation, parties compete in showing that each gives a better deal: more services for less taxation. This is politics as management. It marks the birth of the *procedural state*, distinguished by its principled neutrality on matters of identity and morality. Society becomes a hotel. You pay the price; you get

a room; you are free to do what you like so long as you do not interfere with the other guests. (Sacks 2007:19).

So, in Sacks' view, there is a low-level but constant struggle occurring in UK society, with occasional eruptions on the streets and other visible clashes, such as the Rushdie affair which has been superseded since Sacks wrote his book by the discussion surrounding the application of Sharia law.

Deliverance from this chronic situation will not be achieved by going back to the settlement that applied before the 1970's when multi-culturalism emerged (Sacks 2007:87). Instead he proposes that a renewal of society is needed.

The problem we face is about *society*, not the state. It is not about power but about culture, morality, social cohesion, about the subtle ties that bind, or fail to bind, us into a collective entity with a sense of shared responsibility and destiny. It is just this that many political thinkers tend either to take for granted or to dismiss as irrelevant. If society fragments, politics will lose its legitimacy. Why should I honour the laws and government of a society I do not feel I belong? (Sacks 2007:94)

The solution that Sacks proposes draws upon the Bible which, as indicated earlier, he approaches from a political rather than a theological perspective. He argues that, like Kant, the Bible insists upon the "non-negotiable dignity of the individual". This he links to the idea of freedom, illustrated by the story of Israel's escape from captivity in the Book of Exodus. As it is the task of politics to uphold the good, it follows that the dignity of the individual, expressed by the expression of freedom, are its fundamental concerns (all from Sacks 2007:97). The best means for bringing about a settlement where dignity and freedom are upheld is that of the covenant.

The Bible takes this idea [of the covenant] and makes revolutionary use of it. It is now conceived of as partnership between God and a people. God will protect them. They know this because he has already rescued them from slavery. In return, they are to pledge themselves to God, obeying his law, accepting his mission, honouring his trust. The people are free to choose ... The supreme power makes space for human freedom. There is no justified government without the consent of the governed, even if the governor is the creator of heaven and earth. (Sacks 2007:105)

While Sacks sets this out using biblical language, it will be remembered from earlier, that this needs to be interpreted in political and not theological terms, to show the value of the concept of covenant. This is something he achieves when he compares the covenant-idea to that of contract.

*Social contract creates a state; social covenant creates a society.* Social contract is about power and how it is to be handled within a political framework. Social covenant is about how people live together despite their differences. Social contract is about laws and their enforcement. Social covenant is about the values we share. Social contract is about the use of potentially coercive force. Social covenant is about moral commitments, the values we share and the ideals that inspire us to work together for the sake of the common good. (Sacks 2007:110 author's italics)

The final sentence of this passage is particularly relevant to the Military Covenant. Sacks' approach in *The Home We Build Together* in its UK context is consistent with Elazar's understanding of covenant. It is a powerful statement of the importance of the 'soft' and intangible ties that create society. The Military Covenant belongs very much in this understanding. It rests upon a deeper and more profound basis than that expressed by Tipping and Walters. Elazar and Sacks both indicate the moral nature of a covenant which, in turn shows, tantalisingly, that beneath many contemporary social and political arrangements the part played by Judeo-Christian theological concepts may be both stronger and more pervasive than commonly thought. It has provided a concept that gives substance to the fundamental importance of the moral that goes far beyond the purely contractual. Strikingly, Sacks, with his pessimistic view of contemporary society, is a voice who sounds a warning as to what happens when the moral base is neglected.

Elazar and Sacks are examples of contemporary Jewish advocates of the covenant-idea in public discourse. Voices from a Christian heritage can be found. Michael Kirwan in his *Political Theology* (2008) reflects on the origins of politics which he connected to the resolution of conflict. He illustrates this by referring to two ancient Greek tragedies, *Antigone* by Sophocles and *The Eumenides* by Aeschylus. The use of such ancient texts is a neat illustration of how such material continues to be relevant in the present that Moberly discussed earlier. Each proposed distinctive solutions to perilous circumstances. Although care must be taken about reading them through the lens of our own time, each of these plays showed the development of political solutions by drawing upon concepts that are fundamentally religious to resolve the issues raised in them. (Kirwan 2008:20).

We can recognise the attractiveness of the 'Antigone' mode of political theology, the proud resistance to injustice disguised as religion. The other

style of political theology, represented by the ambiguities of the *Eumenides*, may be less palatable. (Kirwan 2008:22).

Kirwan placed the solution proposed by *The Eumenides* as belonging to an approach that saw the holding back of violence as the “fundamental meaning and purpose of politics” (Kirwan 2008:23). He explored this further when he referred to the New Testament doctrine of the *katēchon*. This is the belief that arose from passages, such as Mark 13 and Revelation 20.7-8, that God restrains the chaos associated with the End Time. When such ideas are combined with the experience provided by the English Civil War, then it is clear why Kirwan looked to Thomas Hobbes as the culmination of a pessimistic understanding of politics that forms part of the modern liberal tradition.

The reason for Kirwan’s positive approach to *Antigone* was its portrayal of religion as having an independence from politics. Whilst the ‘Eumenidian’ tradition adopted an approach that draws upon all resources, including theology, to hold back the forces of chaos, there is a tradition that can be traced to *Antigone* that holds the independence and integrity of religion. Dealing with a situation of injustice, this play showed that where religion and politics become embroiled, an unhealthy situation can come into place. However, by drawing upon its deepest traditions, the best religion is able to stand apart from partisan politics, particularly of the state, so that it can critique and even oppose what is being done.

A true political theology will take a negative stance towards the quasi-religious or messianic claims of politicians, because it will recognise the necessity of keeping open the transcendent dimension, rather than having it sealed up in any particular context. (Kirwan 2008:21)

Instances of this are provided throughout history according to Kirwan:

On this view, *Antigone* stands alongside the extraordinary intransigence of political *refuseniks* of all shapes and sizes throughout the ages: from the Jewish and early Christian martyrs, challenging at such terrible cost to themselves, the idolatrous pretensions of the Greek and Roman imperial powers; to Augustine’s rejection of ‘providential histories’ (both pagan and Christian), and his desacralisation of the Roman Empire in *The City Of God*; to the millennial insurgents of the radical Reformation. In the modern period, the same pattern appears in the protest of Karl Barth and others against the false messianism of National Socialism. Johann Baptist Metz’s attack on ‘bourgeois Christianity’ is a similar protest, as is the *Kairos* Document (1978), the statement of the churches opposed to apartheid in South Africa. (Kirwan 2008:22)

What this tradition possessed was a wisdom that when properly employed leads to an enrichment of society. Religion was a resource not for the prevention of an undesirable condition, but rather a wellspring for positivity and progress. Kirwan associated covenant with this. Covenant offered the basis for an agreed foundation for society; it spoke of partnership albeit not one necessarily of equality. It allowed the thriving of law and convention that moderated relationships between individuals and parties. Kirwan comments:

The covenant idea of the State has a positive anthropology, legitimating a critical theology of power as well as democratic institutions for its control: 'All men are created free and equal and endowed by their Creator with inalienable rights'. A foundation of power in the covenant of free citizens recognises in the polity both of a created disposition of humankind, and an anticipation of the 'heavenly citizenship' in the Kingdom of God. However perverted by human sinfulness, the present State belongs to the essence of and not just to the alienation of humankind. (Kirwan 2008:29)

Kirwan draws upon O'Donovan to indicate that this way of thinking has not always prevailed.

Oliver O'Donovan posits a 'High Tradition' of political theology, which he dates from 1100 to 1650. He maintains that the supposed 'novelty' of twentieth-century political and liberation theologies is due to current theologians' ignorance of this earlier tradition, bounded by the reforms of Pope Gregory VII at the beginning, and at the other end by a relocation of political theory in the early Enlightenment – from theology to Moral Science. (Kirwan 2008:56)

## VI

### Concluding Remarks

To understand the Military Covenant it has been necessary to embark upon a tour of material that is largely hidden from the eye of contemporary participants in public policy making. Yet without some understanding of the covenant-idea, there is a significant impoverishment in the tools that society has available to develop its life.

This view is revealed by the struggle that both Tipping and Walters have in describing the Military Covenant: their depth of knowledge concerning the concept of

a covenant results in them separately producing inadequate explanations of the Military Covenant, even if their analyses in other respects is arguably accurate. Their lack of understanding is not however attributable to personal failings on their behalves: culturally there has been a massive shift away from an understanding of the covenant-idea.

The origins of the covenant-idea lie fundamentally in the Bible where it is used to describe the relationship between God and humanity. As shown, its emergence lies in the Old Testament and it has been subjected to intense scholarly examination. That process has been fruitful in revealing a concept that is capable of formal expression, as Elazar shows, but which emerges out of a gradual process of appreciation of God's relationship to Israel. It was commented that the concept of the covenant is a liminal one: it occupies a position where it connects a mutuality that rests upon trust with a practical expression that formalises obligations. After setting out its origins, a leap was made to the stage before the era when Enlightenment thinking occurred, but which was a critical time itself in the progression towards the modern world. The sixteenth and seventeenth centuries saw a succession of scholarly thinkers whose reflections on government and the state relied upon the Bible to a significant degree.

The demise of the Reformation social covenant movement is not, however, to concede that the use of covenant as a meaningful concept has ended. It is best understood as a hidden source which, like a subterranean river, continues to contribute to the making of its respective landscape. This was indicated by referring to writers whose influence is current and who have sought to show that the covenant-idea is still a salient one. In Kirwan's analysis of the contribution that theology has made to politics for example, covenant, with its underlying vision of divine and human community, contributes to progressive social development. Moltmann argues that a time has come when the recovery of the Calvinist thinkers of the seventeenth century is pertinent.

Tipping's and Walters' misunderstanding of the Military Covenant arose because of a lack of conceptual and cultural awareness of, and perhaps confidence in, the role



played by Christianity. Sacks comments that this is particularly true of the Reformed tradition in the intellectual heritage of the UK (Sacks 2007:105).

Care, however, must be taken not to overstate this. Political philosophy has not developed by using Reformed Christianity's insights of covenant theology. An alternative line, embracing Grotius, Hobbes and Locke, occupies the central position. Nonetheless, to understand covenant, use must be made of its scriptural origins and how they developed in the early post-Reformation era. If this is done, then a more fundamental understanding of the Military Covenant is achieved. Chapter One showed that the Military Covenant is of great significance for the army. It encapsulates the sort of bond that the army believes it needs to function efficiently. While it does so for prosaic practical reasons, it appears to have used Christian terminology largely unconsciously reflecting the often hidden Christian heritage of the United Kingdom.

In opening this chapter a question was set out as a means of framing the discussion that followed: what is a covenant and how does it sit in the modern world? While the above discussion provides a full answer to that question, in summary the covenant-idea is shown to be something of special significance. The concept possesses a moral seriousness which provides a special binding quality between parties that is more than transactional. The concept of a covenant takes public life into a realm that is beyond the prosaic. It furnishes the state with something that is able to speak in the face of the existential issue of what is necessary to enable a society to flourish.



**PART TWO**

**JOHN RAWLS AND A *THEORY OF JUSTICE***

### **Chapter Three** **An Outline of *A Theory of Justice***

#### I

In the opening of the second chapter, two questions were identified concerning the Military Covenant. While that chapter attempted to deal with the first question, this chapter will begin to focus on the second, and will also set the scene for the subsequent development of the thesis. The Military Covenant rests upon an implicit view that the British army needs to be different from wider society in order to be militarily effective. This means that it consequently requires special consideration. The question therefore arises as to whether this can be considered just. One social philosopher who is highly significant in this matter is John Rawls (1921-2002), the author of the seminal book *A Theory of Justice* for whom matters of fairness and justice were paramount. In this chapter his ideas will be set out before considering their value in the next.

Rawls is widely regarded as the most significant public philosopher of the twentieth century (Wolff 2006:176). According to Freeman (Freeman 2007:460), Rawls is responsible for reviving the tradition of the social contract, or “contractarianism”, whose most influential early thinker was John Locke (1632-1704). It was he who largely succeeded Grotius, whose role as a transitional figure from the social covenant to that of the social contract was discussed in Chapter Two. While the idea of social covenant is based upon a biblical background to determine the relationship between the governing and the governed, the basic idea of the organisation of the state under a social contract arrangement is that in some way individuals agree to collective social arrangements that are regarded as having normative authority (Freeman 2007:339).

The connection between Locke and Rawls is that they share a certain view of humankind. Approaches to social contract are broadly divided into two schools. The first is associated with someone who slightly predates Locke, Thomas Hobbes (1588–1679). Hobbes regarded the natural condition of humanity to be one of fundamental instability and frailty.

In the state of nature, where every man is his own judge, and differeth from other concerning the names and appellations of things, and from those differences arise quarrels ... (Hobbes *The Elements of Law* in Tuck 1989:57).

As a result people live in a state of 'felicity', the striving for continual success in achieving objects of desire (Wolff 2006:10). The state is an antidote to this unsatisfactory condition as it offers regulation and security.

... seeing right reason is not existent, the reason of some man, or men, must supply the place thereof; and that man, or men, is he or they, that have the sovereign power ... and consequently the civil laws are to all subjects the measures of their actions, whereby to determine, whether they be right or wrong ... (Hobbes *The Elements of Law* in Tuck 1989:57).

In comparison, Locke is associated with a much more positive view of the human condition. In the state of nature, human beings experience *perfect freedom* in a condition of *equality*, something that is provided by a law of nature:

... every man is put under a necessity by his own constitution, as an intelligent being, to be determined in *willing* by his own thought and judgement, what is best for him to do: else he would be under the determination of some other than himself, which is want of liberty. (Locke *Essay Concerning Human Understanding* in Ashcraft 1987:48)

It follows that sovereignty ultimately lies with each individual which, in turn, implies that every person has an inherent dignity and worth. Not that Locke would have expressed it in those terms. For Locke, Man is not an end in himself: he is to fulfil God's purpose for him (Ashcraft 1987:38). Nonetheless, this is a strikingly different tone from Hobbes' scheme and a highly significant feature of how Locke saw humankind. For Locke, the emergence of the state is in order to enable human nature to flourish and to satisfy God's purpose (Ashcraft 1987:109). However Locke was not naive; he recognised that individual freedom was a delicate matter and in the face of more powerful or immoral individuals, wrong could become overwhelming. It is to prevent this that Locke suggests the emergence of the state in order to safeguard justice.

And thus all private judgement of every particular member being excluded, the community comes to the umpire, by settled standing rules, indifferent, and the same to all parties; and by men having authority from the community, for the execution of those rules, decides all the differences that may happen between any members in that society ... (Locke *Two Treatises of Government* in Ashcraft 1987:113).

It is in the interests of every free individual to give over to a governor the power which is necessary to uphold liberty.

So that the end and measure of this power, when in every man's hands in the state of nature, being the preservation of all of his society, that is, all mankind in general, it can have no other end or measure, when in the hands of the magistrate, but to preserve the members of that society in their lives, liberties, and possessions. (Locke *Two Treatise of Government* in Ashcraft 1987:111)

It is this feature that Locke and Rawls share; both envisage a situation in which individuals realise that it is in their interests to loan something of their freedom in order to obtain or preserve good social order.

Rawls follows this general view. He recognised that in order for human beings to thrive the state can be justified as it upholds *justice* ("Justice is the first virtue of social institutions, as truth is of systems of thought." Rawls 1971:3). The role of the state is to distribute justice in such a way that society is characterised by equality, as arrangements were in the state of nature (Rawls 1971:11). Deviations away from this are only tolerable if they are to the general benefit of society (Rawls 1971:53).

Such has been the influence of Rawls in reviving political philosophy, many aspects of western liberal society have been scrutinised by his ideas (Freeman 2007:458). In the light of his influence, the Military Covenant, with its claim that the army is entitled to a higher standard of consideration than other key institutions in the UK, invites investigation. More widely, because it has been shown that the Military Covenant has roots in the political and cultural traditions that have shaped the British and European tradition, it acts as a means of considering the relevance of such influences in contemporary society. Put sharply, is the key notion that the Military Covenant rests upon, the need to be different, vulnerable to the arguments that Rawls put forward? If this were found to be the case then, as a secondary consequence, the value of Christianity as a provider of concepts to facilitate the life of society would be degraded.

## II

Rawls wrote *TJ* with two clear convictions in mind. In one of his opening paragraphs he writes:

*Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust. Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override.* (Rawls 1971:3 my italics)

These sentences show two significant aspects of *TJ*. Rawls reveals his intellectual antecedents, and therefore the tradition in which he wishes to place himself. With Locke, he is concerned with the principle of liberty, which in *TJ* is both a political and moral condition. In addition, the influence of Immanuel Kant can be seen (see Rawls 1971:xviii). Kant's presence is reflected in the uncompromising manner with which Rawls places social justice at the centre of his scheme. That matters should be arranged so that the outcome is just for the people provides him with an overarching imperative upon which all else rests. Placed together, these two notions are axiomatic for what follows.

Rawls begins his scheme by identifying what he terms as society's "basic structure". The health of this is fundamental to the just functioning of society.

For us the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. By major institutions I understand the political constitution and the principal economic and social arrangements. Thus the legal protection of freedom of thought and liberty of conscience, competitive markets, private property in the means of production, and the monogamous family are examples of major social institutions. Taken together as one scheme, the major institutions define men's rights and duties and influence their life prospects .... (Rawls 1971:6)

This identification of the character of society is not a theoretical exercise; Rawls has a practical intent. According to Pogge (2007), Rawls...

...aims to construct a conception [of justice] that can organise a real society through a moral content that is widely shared amongst its citizens. For this reason, *justice as fairness* includes a *public* criterion intended to play a central role in the political life of an actual society. (Pogge 2007:38 *italic in original*)

In reaching the just society Rawls is not prepared to preserve any shibboleths, however prestigious or significant, if they fail to meet the test of what is just. This reveals the radical edge of Rawls' approach. He is not a pragmatic gradualist; his

ideas are an open challenge to custom and tradition, even when they are woven deep into the fabric of a culture and society. He exposes society to a radical re-appraisal of existing institutions and values. In *Political Liberalism* (1993), he describes the theory he expounded in *TJ* as a “comprehensive philosophical doctrine” (Rawls 2005:xvi).

Rawls was not under any illusion about the challenge he faced in commending his scheme. The power of culture in forming the outlook of individuals-in-society is particularly significant.

...individuals are born, through no choice of their own, into an ongoing society whose social order has a deep influence on their development, on who they will come to be. Not only the options and incentives individuals face but also their very identity - their character, temperament, personality, values, ambitions, goals, ideals, hopes and dreams – are profoundly shaped by the way their society is organised. To be sure, it is all but unavoidable that individuals are deeply shaped by the social environment in which they grow up. (Pogge 2007:61)

To overcome this, Rawls appeals to the rational self-interest of individuals. His scheme is an example of what Pogge terms as “recipient-orientated justice” (Pogge 2007:44). This expression is built on a coming together of three elements; a means of focussing on justice at the heart of moral decision-making, that the beneficiary is humanity as compared to any other end that may be considered, and finally, that there is a delivery of a gain to individuals. Pogge comments

The idea of a purely recipient-orientated conception of justice is immediately appealing: The best way of organising a society is the way that is best for its individual members – how could one possibly disagree with this proposal? (Pogge 2007:44)

However, Pogge continues, criticism has fastened on this point. Recipient-orientated-justice is debatable because of the analysis of society it rests upon.

In a free society, some will succeed, and others, perhaps many, will fail. This is their own responsibility, and avoidable deprivations may not therefore indicate a moral defect in how the society is organised. (Pogge 2007:45)

Recipient-orientated-justice is something that is shared by utilitarianism. However instead of the comprehensive form of social justice of Rawls in which *all* to a varying degree benefit, utilitarianism favours the happiness of the *majority* in the same matters. This shows the fundamental difference between Rawls and utilitarianism.



Rawls aims at benefitting society generally. The utilitarian view, in contrast, leads to a conclusion that accepts that benefits cannot accrue to all, but at best, only to a majority. At heart this difference rests upon the significance of the individual in both approaches. As a thinker belonging to the Lockean liberal tradition, Rawls is fundamentally unwilling to sacrifice the interests of any to that of the many. It is important for Rawls that he discussed political philosophy in non-utilitarian terms (Rawls 1971:xi) and which he is widely credited as having achieved (Sagovsky 2008:119). This leads to a view of society in which the concept of fairness is inextricably bound up with justice. Rawls expresses this most simply by using the expression “justice as fairness” (Rawls 1971:10), the expression that is commonly taken to summarise *TJ*.

### III

The first stage in Rawls’ design of how to achieve a just basic structure in society invites comparison with Locke and Hobbes and another early social contract theorist, Rousseau. While they may have conceived of a *historical* arrangement that brought about the state, Rawls envisages an effort of the *imagination* and *intellect* to produce a fundamental arrangement of social goods.

In order to do this we are not to think of the original contract as one to enter a particular society or to set up a particular form of government. Rather, the guiding principles of justice for the basic structure of society are the object of the original agreement. They are the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association. (Rawls 1971:10)

This “original position of equality” is the equivalent of the state of nature in earlier workings of the social contract (Rawls 1971:11). While in this original position people are in a state of existential uncertainty, which Rawls calls the “veil of ignorance”.

Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does anyone know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are behind a veil of ignorance. (Rawls 1974:11)

Despite the uncomfortable nature of being behind the veil of ignorance individuals make choices that are rational. They will make decisions concerning liberty and justice based upon fairness, which is not only just but also reasonable. Given the extraordinary circumstances they are in, the choices made are also pragmatic.

Justice as fairness begins, as I have said, with one of the most general of all choices which persons might make together, namely, with the choice of the first principles of a conception of justice which is to regulate all subsequent criticism and reform of institutions. Then, having chosen a conception of justice, we can suppose that they are to choose a constitution and legislature to enact laws, and so on, all in accordance with the principles of justice initially agreed upon. (Rawls 1971:11-12)

This is the basis from which fair social institutions would emerge (Wolff 2006:154). However, this is only partial in setting out the just society. Although people should have equality in terms of personal liberty and related goods, social and economic differences also need to be addressed in order to bring about justice as fairness (Rawls 1971:13). This is a crucial feature of Rawls' scheme. According to Freeman, *TJ...*

...requires societies to focus on the economically *least* advantaged first and take measures to maximise their economic prospects (including opportunities to exercise influence and control in their work). (Freeman 2007:xii)

Above all, the original position leads to a conception of society that is based upon moral concepts that are also derived from self-interest. It also succeeds in relating to the practicalities of a world in which economics, and therefore material self-interest, feature. In addition, almost incidentally, it succeeds in escaping from the challenges that beset the establishment of society found on the classical social theorists. The original position is therefore an elegant and efficient mechanism. Rawls shows a way in which society may attain fairness given that vested interests are likely to be highly resistant. So long as society is broadly a liberal democratic one, it is axiomatic for him that some redistribution is not only just, but also possible (see Rawls 1971:xv and 13).

In the next step of Rawls' scheme, individuals who operate in the original position under the veil of ignorance will produce what he formulated in his two principles of justice.

First: each person is to have an equal right to the most extensive scheme of basic equal liberties compatible with a similar scheme of liberties for others.

Second: social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all. (Rawls 1971:53)

It is the operation of these principles within the basic structure of society that leads it to be considered just. The first is known as the principle of equal liberty (Rawls 1971:57), and the second as the principle of fair equality of opportunity (Rawls 1971:73).

It is axiomatic for Rawls that the lexical order between the principles is fixed (Rawls 1971:37) and that the first has priority. According to the first principle, there exist fundamental rights or "basic liberties" (Rawls 1971:53) that are necessary if individuals are to be free and equal. Those rights enable persons to develop themselves and follow a way of life that is beneficial (Freeman 2007:45). According to Freeman this allows Rawls to be specific in what he actually means. He is not concerned with the abstract principle of liberty itself, which is notoriously difficult to define, but with more tangible goods (Freeman 2007:45ff). In *TJ* Rawls provides the following set of basic liberties.

Important among these are political liberty (the right to vote and to hold public office) and freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person, which includes freedom from psychological oppression and physical assault and dismemberment (integrity of the person); the right to hold personal property and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law. These liberties are to be equal by the first principle. (Rawls 1971:53)

Whilst the priority of the first principle is clear, the second principle still has a vitally important role in serving the basic structure of society. If society is to be just, then matters to do with economic equality need to be addressed.

The second principle applies, in the first approximation, to the distribution of income and wealth and to the design of organizations that make use of differences in authority and responsibility. While the distribution of wealth and income need not be equal, it must be to everyone's advantage, and at the same time positions of authority and responsibility must be accessible to all. One applies the second principle by holding positions open, and then, subject to this constraint, arranges social and economic inequalities so that everyone benefits. (Rawls 1971:53)

Rawls explores at length the application of the second principle. He examines what he regards as two ambiguous phrases contained in its definition; “everyone’s advantage” and “equally open to all” (Rawls 1971:57ff). He discusses four possible interpretations of the principles and the outcome is the identification of what counts as legitimate authority in his conception. He concludes that equality, which is at the heart of both principles, requires society to need a democratic system. Although the distinction may appear to be a fine one, this outcome is not primarily a prescription for how government is to be determined, but rather the comprehensive political system under which the equality of individuals can be shown in practical terms.

The introduction of democracy to the discussion in turn leads to the third principle in Rawls’ conception, the difference principle. This is the means by which he seeks to reconcile justice as fairness with the reality of inequalities in society. Less easily expressed in comparison to Rawls’ two major principles, the difference principle is a device borrowed from economic analysis on the distribution of wealth. It is a method of analysis for examining the “social and economic inequalities of the basic structure” (Rawls 1971:65) and a means by which injustice can be challenged.

What, then, can possibly justify this kind of initial inequality in life prospects? According to the difference principle, it is justifiable only if the difference in expectation is to the advantage of the representative man who is worse off, in this case the representative unskilled worker. The inequality in expectation is permissible only if lowering it would make the working class even more worse off. Supposedly, given the rider in the second principle concerning open positions, and the principle of liberty generally, the greater expectations allowed to entrepreneurs encourages them to do things which raise the prospects of labouring class. Their better prospects act as incentives so that the economic process is more efficient, innovation proceeds at a faster pace, and so on. (Rawls 1971:68)

The stridency of *TJ* is intellectually startling. It is reminiscent of Ockham’s Razor, an example of reductionist thinking in medieval philosophy that has since been applied across the spectrum of intellectual disciplines. Rawls exposes social customs and institutions, using the term he uses above, to an “inviolable” test (Rawls 1971:3). All must be reduced to as simple a condition as possible; any elaboration or development has to be subject to the criticism provided by the grand theory.

#### IV

So far, Rawls' conception has been set out by describing a number of steps. It is important that this way of proceeding does not disguise the interconnecting and dynamic nature of Rawls' scheme. This serves to underline the point mentioned earlier that Rawls was concerned with a practical and not simply a theoretical scheme. Rawls calls attention to both these matters by commenting:

To achieve this end (*a just society*) it is necessary to set the social and economic process within the surroundings of suitable political and legal institutions. Without an appropriate scheme of these background institutions the outcome of the distributive process will not be just. Background fairness is lacking. (Rawls 1971:243)

In the light of this, given that Rawls works out his conception early in the book, the majority of the span of *TJ* is concerned with elucidating and defending the two principles and the role they play in relation to the basic structure of society. In the course of doing this, and as a result of the insights that emerged, while Rawls does not change the scheme in a substantial sense, he makes amendments which are designed to explicate it further. An example of this occurs when he works at the impact of the difference principle. He finds that a consequence of applying to a situation involving the relief of poverty leads to a redesign of the second principle (see Rawls 1971:72). Even this is not the final form of the second principle. This is not arrived at until much later (see Rawls 1971:266 for final formulation). Clearly *TJ* possesses the characteristics of subtlety and intricacy.

As an example of this it is possible to see how the difference principle works when it is placed alongside an aspect of liberty, the right to exploit or pursue opportunity. If, for instance, an individual is notably enterprising and aspirational, but also markedly unsuccessful in their entrepreneurial activities, is it just when considering the most effective use of resources, that such an individual is allowed to persist in the pattern of failure? Is there, in other words, a limit to the possibilities provided by fairness? In response Rawls would direct those who suggest that such an individual is wanton by reminding them that his system contains a lexical priority. Therefore, despite repeatedly failing, an entrepreneur would seem to have the right to strive, so long as what is being attempted is moral and lawful.

In *TJ* Rawls writes about the integrity of the individual while also being concerned with how society needs to be arranged to achieve a condition that can be regarded as just. As the first quotation cited in this chapter shows, justice cannot be enjoyed by an individual in an environment that does not also include just social institutions. A society that seeks to attain what may be regarded as a good end for its citizens, but at the cost of their liberty, is unjust. The means is not justified by the end. This is a further example of how Rawls shows he is not a utilitarian. A just society is achieved by the pursuit of equality. This is clearly a reasonable position; for liberty to be real, persons must possess the fundamental means of being equal or else their liberty is jeopardised. However, in the reality of human experience, this is clearly not apparent, particularly in respect of economic matters. Indeed some would argue that it is contentious whether it is even desirable. If society is to be capable of economic sustainability, incentives, some of which it is hard to see reflect any notion of equality, need to exist so that wealth is generated to benefit the general body of society.

Rawls stands toe-to-toe against this challenge. In a further discussion of the difference principle, he undertakes an extended and technical discussion to explain its usefulness. In chapter II section 13 of *TJ* (Rawls 1971:65 – 73) he restates his view that it is the principle by which all in society benefit and is therefore the most rational. Granted, some individuals, namely innovators, will individually benefit the most. However, this is offset by the benefit that all will receive to a proportionate degree. This outcome is known as the maximin position in rational choice theory (see Wolff 2006:160-164), and describes the distribution of the minimum amount of a good to the maximum number. Rawls himself does not use the expression. In his view he is writing about a principle of justice and not economics (Rawls 1971:72) and, he believes, it fits badly such circumstances where this is the case. As an aspect of economics it operates in discussions of “choice under great uncertainty” (Rawls 1971:72) which, presumably, implies a crisis rather than the cooler and balanced situation that befits the sort of right-thinking associated with justice. In a world in which physical and logical constraints exist along with formal (legal) ones, the difference principle emerges as the most just means of promoting the greater good of society. In comparison, in utilitarianism, in extreme

circumstances, because there is no *limiting* governing outcome in place or minimum one which must be achieved, there is a risk that in failing to reach the maximisation of a good all may be lost. The greater good that justifies utilitarianism is not balanced by what may happen to the minority, or indeed to all, if a failure should occur. There is no moral or actual safety net. The utilitarian position is not underpinned by the understanding which permits the limited opportunities created by the difference principle, which is that the outcome must be one of benefit for all.

For Rawls, the basis for a just society rests upon the impetus provided by the veil of ignorance (Rawls 1971:251). Although this too can be described as a crisis situation, it can be distinguished from the maximin condition in that it is a thought-device which has a limited role of heightening conditions under which justice can be achieved. It is designed specifically to heighten the awareness of the rationality of fairness so that a just society may follow.

... the idea of justice as fairness is to use the notion of pure procedural justice to handle the contingencies of particular situations. (Rawls 1971:243)

Particularly with the first principle in mind, the view of society envisaged by Rawls is that of liberal democracy. This, according to Freeman, was central to Rawls' approach.

The guiding purpose of Rawls's work is to justify the primary institutions of a liberal and democratic society in terms of a conception of justice that democratic citizens themselves can accept and rely upon to guide their deliberations and to justify to one another the basic institutions and laws governing a democratic society. (Freeman 2007:x)

However, for such a society to be just, not only must philosophical concerns be accommodated, so too economic matters need to be addressed by the rigour of justice. Rawls is inclined towards the market as resolving economic issues, mainly because it assists the cause of liberty and is an antidote to overweening economic power (Rawls 1971:240-241). Despite this identification with liberal democracy, Rawls acknowledges that the historical and cultural factors of particular societies cannot be overlooked. Therefore variations on the continuum from liberal to socialist economic arrangements may be compatible with justice as fairness (Rawls 1971:242). Regardless of the specific type of political arrangement, what Rawls sees as essential for his conception of justice is the need for a regulated system to

oversee social and economic conditions (Rawls 1971:243). The market alone cannot be relied upon to produce a just and equitable distribution of goods.

To achieve this, government needs to have four branches or functions to oversee the market economy. These are allocation and stabilization, whose job it is to maintain the efficiency of the economy, and branches to supervise the processes of transfer and distribution in the economy. The regulatory role of institutions in managing the function of these branches is something Rawls is clear about (see Rawls 1971:244–251), although he is careful not to be specific about how this is to be done (Rawls 1971:248).

## V

The second principle is powerful in creating justice as fairness by ensuring that individuals are not disadvantaged by their background. Rawls writes

... those who are at the same level of talent and ability, and who have the same willingness to use them, should have the same prospects of success regardless of their initial place in the social system. In all sectors of society there should be roughly equal prospects of culture and achievement for everyone similarly motivated and endowed. (Rawls 1971:63)

It was commented on earlier in the opening paragraphs of this chapter that the influence of Rawls has been extremely significant and that he intended that impact to be a practical one. This can be seen in many examples of developments in public policy. A recent one is the Equality Bill which was introduced in April 2009 to the House of Commons. The purpose of the Bill was stated as being to:

Make provision to require Ministers of the Crown and others when making strategic decisions about the exercise of their functions to have regard to the desirability of reducing socio-economic inequalities; to reform and harmonise equality law and restate the greater part of the enactments relating to discrimination and harassment related to certain personal characteristics ... to increase equality of opportunity; and for connected purposes. (Equality Bill 2009:1)

Although the background to this piece of parliamentary business goes back over 40 years (Equality Bill 2009:1), it is hard to see nonetheless how this is anything other than a legislative expression of justice as fairness. The impetus for equality may well have a number of sources, but the hand of Rawls is also very evident.



This chapter began with the context of the Military Covenant and the matter of its justice. After placing *TJ* in the Lockean tradition, with the influence of Kant also clear, it has proceeded to introduce the ideas of John Rawls as a means of resolving this question. As shown, *TJ* is a complex and humane work; its vision is one that is based upon a profound regard for humankind, a conclusion that arises out of a comparison with utilitarianism. Unfortunately, as will be shown in the next chapter and later in a further chapter, it is also one that is open to strong criticism on a number of grounds.

## Chapter Four An Evaluation of *A Theory of Justice*

In the previous chapter, Rawls' prescription for a just society in his principal work *TJ* was set out. In this chapter a number of substantial criticisms are going to be made of his scheme. A common characteristic of these comments is that they are rooted in Rawls' own cultural heritage as an American, which influenced him to an extent he seems to have been unaware. Further, *TJ* will be challenged as an ideological work that does not contain, in fact, the rational scheme that Rawls supposed. This will be illustrated by reference to the general principle of liberty which is undermined by Rawls' conception. The criticism that Rawls' work is flawed in terms of its rationality is for this thesis the most important difficulty it has. That his approach in *TJ* and elsewhere is susceptible to the charge that it is not, in fact, so evidently reasonable will be explored. One way that this will be done is by exposing issues to do with Rawls' understanding of human nature and moral capacity. In particular the original position and the veil of ignorance will be questioned as to whether they are as reasonable and universal as Rawls would suggest. It will also be shown that Rawls himself became aware of such challenges. This led him in his later works of *Political Liberalism* and *The Idea of Public Reason Revisited* to restate his approach. Unfortunately, it will be suggested, that the success of these ventures is also open to question. The significance of this for an accurate evaluation of Rawls is great as it has consequence for how his approach to religion must be seen and regarded.

### I

#### Rawls and being American

One of the strengths of *TJ* is that it offers an alternative means of understanding how social contracts emerge. In the case of Locke, for example, he seems to have envisaged an actual historical process that led to the social contract (Yolton 1977:274ff). This is partly because he was developing his ideas against the background of those of Robert Filmer (see Yolton 1977:2), whose doctrine of the divine right of kings rested upon what was understood as a historical basis provided by the Bible. Rawls rescues this tradition from the criticism of naiveté by moving away from a historical or a narrative setting to a psychological one. The veil of

ignorance is a stressful experience, with its loss of self-awareness in terms of status and even values (see Rawls 1971:118-19), that relates to the personal experience of human beings.

The origin of the state appears to be an issue over which theorists show some sensitivity: to what extent does someone have obligations to obey the laws of a state they inherit? Both Locke and Rawls, as will be shown below, offer solutions that can be criticised. A contemporary Christian response might be to recognise that the emergence of the state is an aspect of the biblical theme of creation. It is a bulwark against chaos, the antithesis of the order of creation. Like creation as a whole, it is something that human beings are 'gifted' and over which they, as moral agents, are able to exercise choice. Some people will seek to live responsibly, others less so. Regardless of the quality of human activity, just as each person benefits from nature, so too the state, which is itself an aspect of nature, is a benefit to all. Human society is a given that is grounded in creation.

Although Rawls succeeds in placing the foundation of the social contract tradition on a stronger footing, he is open to the accusation that the original position is a piece of stage management. Freeman, who is sympathetic towards Rawls, refers to the criticisms made by the noted British public philosopher, H.L.A. Hart (1907-1992). Hart was unclear why those in the original position should adopt the set of basic liberties that Rawls ascribes to them, and why they would agree to the order of priority that he sets out. What is it that is *universally* inherent in the basic liberties that make them apparent under the circumstances of the veil of ignorance? Secondly, Hart thought that Rawls does not explain how the basic liberties operate in relation to each other when they appear to conflict. So, for example, he does not give an account of how conflict between someone's liberty of conscience may be resolved with another's freedom from psychological oppression. Freeman tellingly suggests that the basic liberties reflect the constitutional laws of the United States and other liberal democracies (Freeman 2007:53).

The view that the original position, perhaps unknowingly on Rawls' behalf, leads to such an outcome, suggests that justice-as-fairness is not the inevitable outcome of

reasonable and rational beings; it is the outcome of people who are being manipulated in an exceptional and unrealistic state of existence. This is the view set out by Esquith and Peterson (1988). They position Rawls as a social philosopher who reflects closely the prevailing political culture of his era.

Our criticism of Rawls is that justice as fairness doesn't reduce coercion in democratic politics but subtly reorganises it with an idealized procedural language of markets and competitive games. (Esquith & Peterson 1988:300)

In their opinion, the way the original position is constructed is the cause of this fundamental difficulty. They argue that Rawls in the original position succeeds in providing, apparently without realising it, a method of reinforcing the status quo in American society.

Rawls seeks the philosophical, institutional, and psychological bases for a non-coercive political association of persons under the conditions of late twentieth-century capitalist society. He seeks the basis for a voluntary social consensus in a context marked by relativism and conflict. (Esquith and Peterson 1988:306)

In connection with this, it may be worth noting that the US Declaration of Independence describes the truth of certain rights as being unalienable and self-evident. For Rawls, as an American, the significance of this may have eluded him.

## II

### Nozick's objection

Related to this criticism is the one raised by Robert Nozick. He argued in *Anarchy, State, and Utopia* (1974) that *TJ* is deeply biased towards a particular outcome that reflects Rawls' own values. Reflecting his libertarianism, Nozick used an argument that he believes can be applied generally to non-libertarian visions of society (Nozick 1974:156) of which he regarded Rawls as being an example. Nozick argued that ultimately they constrain liberty by introducing regulation to shape society to a desired end.

Let us call a principle of distribution *patterned* if it specifies that a distribution is to vary along some natural dimension, weighted sum of natural dimensions, or lexicographic ordering of natural dimensions. And let us say a distribution is patterned if it accords with some patterned principle (Nozick 1974:156 author's italics)

Nozick advocated a view of society in which liberty is absolute. As a result, social and economic goods are distributed unevenly between individuals. This distribution is, and must remain, uneven and it is the responsibility of people to accrue what they can of these goods without impinging on another's liberty. As a result, some will thrive while others stumble, some will achieve great wealth while others live in poverty.

Nozick accepted that some variation from this unregulated distribution of goods can occur. Processes take place that influence the distribution of goods in society, a process Nozick called patterning. Some patterning is necessary in the interests of justice. For example, a criminal may lose his ill-gained advantage. However in his treatment of Rawls, Nozick identified a more substantial and more deliberate form of patterning than what might be regarded as an aspect of natural justice. This is to do with policies or programmes that are introduced into society with a view to attaining some goal. This is a form of patterning that shapes the distribution of goods in a manner that has been identified as appropriate for society.

The principle of distribution in accordance with moral merit is a patterned historical principle, which specifies a patterned distribution. "Distribute according to I.Q." is a patterned principle that looks to information not contained in distributional matrices. (Nozick 1974:156)

From this point of view it is easy to see why Nozick identifies *TJ* as promoting a pattern. The Rawlsian conception of the just society, although it claims to be a liberal one, is clearly some distance from the outline of Nozick's view above. Nozick in particular focuses on the difference principle to make his case (Nozick 1974:209).

This is because it is essentially a mechanism that is designed to take away from those who are deemed by Rawls to have an unequal and disproportionate distribution of goods. While Nozick accepts that there will be significant differences of wealth and opportunity in a thorough-going liberal society, Rawls seeks to shape society so that it is characterised by fairness.

What this points to is that Rawls has an ideological stance. He is not describing society *as it is*, but *as he wishes it to be*. This is a very powerful criticism. Above all,

as Wolff points out, it is a vision of society that must ultimately rely on sanctions for its achievement.

Patterns, he (Nozick) argues can only be enforced at grave cost to liberty. Suppose we decided to maintain a pattern ... we need to make intrusions into people's lives: by stopping them from doing what they want to do, or by investigating their holdings of wealth and income, and removing some, from time to time ... Proper respect for liberty, then, rules out enforcing a pattern. (Wolff 2006:174)

Nozick accuses Rawls of wanting society to be liberal, while at the same time advocating processes to achieve an end-state of fairness. For Nozick this is simply impossible as it compromises his understanding of what a truly liberal, and free, society consists. It is around this difference that others emerge, such as their understanding of justice.

### III

#### Further issues concerning Rawls' claim to rationality

Whilst Nozick's criticism is a highly substantial one, there are several others. Another problem emerges in the form of the realism of Rawls' anthropology. This is dealt with in more depth in a later chapter; however some observations can be appropriately made at this point. Given the specific description of people in the veil of ignorance, the extent to which they are still recognisably human beings in terms of their mental state and intellectual abilities is open to serious question. Sagovsky describes the people in the veil of ignorance as 'pre-people' (Sagovsky 2008:127). Harries, who is very familiar with Rawls' work (Harries 2010:15), makes a similar comment as a riposte to Rawls. He argues that the importance attached to the development of an individual's personality through the events of life has grown (Harries 2010:12).

One crucial fact, of which we are probably more consciously aware than our forebears, is that identity is to a significant degree a human construct. Clearly, some things about us and the wider social and national groupings to which we belong are a given. It is a fact that I was born on a particular day in a particular city. It is a fact that I am white, getting on in years and male. There are some grey areas even here, of course. Some people find themselves born with a body that is physiologically of one sex, but emotionally and spiritually they feel, from an early age, that they really belong to the other one. So we have a certain number of trans-gendered people. Then there is the question of our sexuality, which also is important to our identity. (Harries 2010:115)

Therefore the extent to which the characteristics of *any* people within the veil of ignorance qualify them as representative of the disparate character of the human race, is open to question. Echoing Nozick's criticism that Rawls is contriving circumstances to achieve his own end, doubt can be cast on the genuine neutrality of the outcome.

Although the veil of ignorance is a theoretical device which can be criticised within those terms as an arrangement designed to achieve an environment in which decisions about justice can be made, it is not unreasonable to imagine an analogous practical example to provide another, albeit lesser, criticism. This concerns the deliberations undertaken by a jury. While individuals in the veil of ignorance are deprived of their biographical situation, jurors, in contrast, undertake their responsibilities as individuals whose social position and values are not removed, even if they are not permitted to undertake their normal lives for the duration of their service. They undertake their task of dispensing justice as people who have a duty to reflect honestly upon the legal case which is before them. Accepting that there can be miscarriages of justice, this nevertheless has not resulted in the abandonment of the system. Generally, it follows, people-in-life can therefore seemingly operate ethically. Following Harries, the veil of ignorance is an arrangement that does not fit well into life. This suggests that the need for the veil, in order to grasp what is fair and just, is open to question.

A further doubt is to do with Rawls' conception as an example of recipient-orientated-justice that was discussed in the previous chapter. While it is inherently attractive that individuals are placed so that they generally benefit, it is at the expense of allowing for what might be regarded as the earned or deserved rewards for effort and success for some individuals in society. As a result it fails to reflect the realities of community. *TJ*, according to MacIntyre (MacIntyre 2007:249), fails to appreciate the importance, and moral case, for reward based upon merit.

A very important criticism is to do with Rawls' relationship with utilitarianism and much has been made of his rejection of it. Although it has been shown that there are notable differences between *TJ* and utilitarianism, he shares with it a concern for, if

not the happiness of the majority, then at least their general good. The veil of ignorance is a device for achieving the good of as many as possible and some may judge whether it is simply a matter of semantics as to whether this is ultimately really distinguishable from the utilitarianism of which Rawls is so critical.

As familiarisation with Rawls' scheme grows, the impression is created of a man whose concerns were to bring about a benign society which perhaps resembled his own temperament as a liberal minded Harvard professor. The difficulty however is that human beings are not always so inclined. Human nature is not dispassionate, as in the veil of ignorance, particularly when under stress. Generally, people show many characteristics. Some behaviour appears to be altruistic, so the grimness of the Hobbesian position is not inevitable. Yet any reflection on human nature must reflect on the reality that the lives of people, when considered overall, includes struggle. Men and women commonly perceive that their lives are constrained by various factors and conditions. In order to overcome the condition of anxiety that emerges as a result, endeavour and effort are axiomatic to the achievement of well-being.

In more specific terms, this criticism can be seen in how Rawls deals with this more realistic view of human nature when he discusses rational choice theory and the option of choosing maximax. This is an arrangement that leads to the best possible outcome, even if it is only for a few, by maximising the maximum. Wolff explains that this possibility is essentially a gamble and not really worthy of consideration, as the risk of failing to achieve the maximum position is disaster in the form of an extensive loss that may only lead to a minimal outcome (Wolff 2006:163). This, however, runs the risk of falling into tautology. If human beings will not risk the maximax position, because it is fundamentally irrational, the veil of ignorance becomes either unnecessary or else a subtly coercive means of achieving its counter, maximin. The conclusion arises that the veil of ignorance is a device for arriving at a position Rawls favours politically, rather than it being a strictly rational one that is inherently attractive. In order to achieve his outcome of maximin, Rawls distorts human nature to the extent that the veil of ignorance does indeed result in 'pre-people', a desiccated parody of human complexity.



On two occasions the preceding discussion has mentioned Rawls' use of rational choice theory. This shows the use he makes of economic theory to illustrate his argument. It is therefore appropriate that an illustration introduced earlier is returned to, in order to show a further area of concern. Previously it was discussed how many times it was reasonable for a serially unsuccessful entrepreneur to fail before he is disqualified from further attempts. The answer it was suggested was that, given the lexical priority of liberty and so long as no immoral or illegal activity was being undertaken, such an individual was free to pursue his or her own destiny. One way of understanding this situation is to see it as an example of maximax without any impunity, other than that provided by any personal diminution of the entrepreneur's own resources. This means that, at the level of individual behaviour at least, through the application of the liberty principle, the maximax option may be actually more robust in Rawls' system than he realises.

This illustrates the complexity of Rawls' scheme and that as a result it may not be as coherent as he would wish. Of course a defender of Rawls may well reply that the case under consideration sidesteps the principle which requires that social and economic inequalities are managed in the best possible way. However, that simply serves to further illustrate this criticism of the complexity of *TJ* and the difficulty that exists in applying all the features of Rawls' scheme equally and comprehensively. Ultimately what emerges is that *TJ* requires a high level of discrimination in how it is applied, and that careful qualifications and caveats have to be used. This hypothetical example concerning the behaviour of an individual shows that what begins by seeming a simple situation in fact runs the risk of falling under the weight of sophistication. This is heightened further when it is borne in mind that Rawls is focussing ultimately on what is good for society and not just for individuals: if the Rawlsian conception fails at the level of the individual, it is difficult to see how it can operate more widely. This is reinforced by the veil of ignorance process which is conceived with the behaviour of an individual in mind.

## IV

### A critique of Rawls' moral powers

Axiomatic to the Lockean tradition to which Rawls belongs is a particular view of the nature of humanity. For Rawls, human beings are essentially moral creatures and are able to live in the light of reason. Rawls attributes to people two specific moral powers that make them distinctive from all other animals

Moral persons are distinguished by two features: first they are capable of having (and are assumed to have) a conception of their good (as expressed by a rational plan of life); and second they are capable of having (and are assumed to acquire) a sense of justice, at least to a certain minimum degree. (Rawls 1971:442)

Human beings are *rational* creatures because they can appreciate that their existence reflects the choices and decisions that they make, and *reasonable* because they have at least an incipient notion of justice. This recognition of reasonableness means that human beings have an intrinsic understanding of goodness (Freeman 2007:54). Rawls does not explain why he reached this view of human beings. Freeman suggests that ultimately Rawls reflects

... the common-sense view that humans as a species deserve an exceptional kind of moral consideration, above and beyond that which we owe to other animals; for humans, unlike other species, have the moral powers to be reasonable and rational and other powers necessary for practical reasoning. This is what distinguishes humans as primary subjects of justice. (Freeman 2007:55)

The question of whether this is an adequate description of humanity is of course one of the enduring questions of intellectual enquiry. Just as it is necessary to understand the background provided by Christianity to understand the Military Covenant, Rawls' original position, like all state of nature theories emerges, arguably, from the cultural and intellectual deposits laid down by Christianity. The Eden myth of the Book of Genesis, with the portrayal of humanity in a perfect state of well-being, is the implicit aim of the liberal tradition from Locke onwards. Whilst the social-covenant tradition looks to Sinai and suggests that the ordering of society must reflect the Creator, the social contract/contractarian tradition is an attempt to achieve the same end as that myth by means of organising society from a humanistic perspective. The Christian understanding of the early chapters of Genesis is one in which the introduction of sin plays a powerful role. Whilst Christian anthropology on the one hand affirms

positively the good of creation, which embraces, in Adam and Eve, in embryonic and symbolic form human society, it will also on the other, want to indicate that any realistic conception of human nature needs to manoeuvre with the capacity human beings have to show injustice, to act irrationally, and to be cruel.

According to Freeman, Rawls had a complete antipathy to such views.

Rawls's concern for the possibility of achieving justice and its compatibility with human nature and the human good were driving influences behind his written work. ...The biographical point deserving emphasis here is that in rejecting Christian doctrine, Rawls was rejecting Christian pessimism about human nature and its skepticism of humanity's capacities for justice, to find meaning in this life, and to redeem itself. (Freeman 2007:11)

However eloquently this *cri de Coeur* is expressed, the psychology of those placed in the original position is susceptible to the false optimism, certainly from a Christian perspective, of relying on an innate rationality and reasonableness that outweigh less positive aspects of human nature. This is where the crux of this thesis's difficulty with Rawls' approach in *TJ* and, in anticipation of what is to follow, elsewhere lies. Freeman summarises the sense that emerges as familiarity with Rawls grows. Rawls had a profound and pervasive distaste and disregard for the Christian faith.

Wolterstorff (Biggar and Hogan 2009) explains Rawls' difficulty with religion as a tendency that is found among many public theorists. An example is Ronald Dworkin who, according to Harries (Harries 2010:13), advocates the removal of religion from public life. According to Wolterstorff such accounts rely on the view that religion is a cause of extreme division and therefore should be removed from the "public square".

Over and over it is said or assumed that the presence of religion in our society, so long as it comes in a plurality of particularist forms that are comprehensive in their reach, and so long as there are those who reject religion in all its forms, necessarily harbours within itself the threat of coercion and violence. Religion, though it may talk and dream of peace, is a menace to peace. (Biggar and Hogan 2009:21)

People who seek to participate in society by espousing their religion cannot do so in a liberal democratic society. Indeed, it would seem to follow, any view held with conviction that includes a measure of interpretation of the world, such as a thoroughgoing environmentalist position for example, encounters the same objection. The outcome is that public debate is the domain of those who occupy a narrow range of opinions but who are lacking in any convictions. Such an individual

may be regarded as a reduced form of person. This is a return to the argument made by Sagovsky discussed earlier.

## V

### Rawls as his own critic

The cumulative force of objections to *TJ* means that it is overwhelmed and must be judged a failure. This conclusion is illustrated by Wolff. In his examination of Rawls' conception, he begins by being positive. He concentrates upon the technical features of Rawls' approach, the aspect he regards as its strength.

... there is some plausibility in the idea that the Difference Principle would be chosen from behind the veil of ignorance, in the original position. And we have already accepted that the Liberty Principle and the Fair Opportunity Principle would also be selected, although it is less clear that they should be afforded the priority Rawls gives them. (Wolff 2006:168)

Indeed, he comments, if the scheme is considered as a *hypothetical* work, he judges it, generally, successful (Wolff 2006:169). However that is not his final position. While moving to making his appreciative remarks, he cannot but concede that he is unclear about wider features of his work (Wolff 2006:152ff) and ultimately Wolff judges *TJ* to be unsuccessful because it is biased towards a certain outcome. He is critical of Rawls' theory of the good, discussed in the previous chapter.

These goods are particularly suitable for life in modern capitalist economies, built on profit, wages, and exchange. Yet surely there could be non-commercial more communal, forms of existence and hence conceptions of the good in which wealth and income – even liberty and opportunity – have lesser roles to play. So, runs the criticism, Rawls' original position is biased in favour of a commercial, individualist, organisation of society, ignoring the importance that non-commercial, communal goods could have in people's lives. (Wolff 2006:170)

This criticism combines that of Esquith and Peterson with that of Sagovsky: Rawls' scheme is a reflection of the social and economic system of the USA while also being based upon a parody of *real* human beings and their diversity. While Wolff finds merit in the theoretical framework of *TJ*, it doesn't survive contact with the real world.

Rawls himself came to accept this and realised that he had failed in his ambition for *TJ*. Arguably his weakness was not his aim of the creation of a truly just society in which the liberty and well-being of each individual is safeguarded. The problem for Rawls is his reliance on Kant. Reason, Kant argued, leads to the identification of certain principles that are fundamentally true. While some of these principles belong to science, others belong to morality. However, a morality based on what leads to happiness, which a utilitarian would support, is an inadequate basis for determining right action. To understand what human beings must do involves reflecting on what makes for *goodness* and the formulation of statements that provide for that end to be attained. Supreme amongst these statements is Kant's formulation of the categorical imperative, "I ought never to act except in such a way that I can also will that my maxim should become a universal law" (Paton 1978:67).

It is from this that it is possible to see how Rawls was led to his liberty principle. If it is just that humanity should only pursue those conditions that can be regarded universally as fair, then society itself cannot be exempt. A set of rules needs to be formulated that creates a universally fair society. It is these rules that *TJ* seeks to provide. The difficulty with Kantian ethics however is that although the categorical imperative appears persuasive, it has not led to a universal understanding of what makes for human good. Principles clash, which is what Nozick shows. Individuals can be free but not absolutely so. How liberty is experienced is shaped by wider priorities that are put into place through patterning. There are many cultural and historical circumstances at work which shape the form of society. Rawls came to accept this.

In 1993 Rawls published *Political Liberalism (PL)*, a book which underwent a subsequent revision and was re-published in 2005. It contains a fundamental re-statement by Rawls of his position after taking stock of the reception of *TJ*. In the Introduction to *PL* Rawls sets out what his ambition for *TJ* was and how he had come to acknowledge its central weakness. Although Nozick is not mentioned, the impression that arises is that Rawls must have been aware of his criticisms; it is inconceivable, given the significance of Nozick's work that he was not.

In the Introduction to *PL* Rawls explains that his purpose in writing *TJ* was to create a “comprehensive philosophical doctrine” (Rawls 2005: xvi). What Rawls meant by this is that in order for a society to be well-ordered its citizens will “endorse” the principles that underlie justice as fairness as set out in *TJ*. The force of this claim should not be under-estimated. What Rawls is suggesting about *TJ* is that it set out an intellectual mechanism for producing the good society. It was a conception that was intended to be the normative prescription for how a just society was to be attained.

The aims of *Theory* (still to paraphrase) were to generalize and carry to a higher order of abstraction the traditional doctrine of the social contract. I wanted to show that this doctrine was not open to the more obvious objections often thought fatal to it. I hoped to work out more clearly the chief structural features of this conception – which I called “justice as fairness” – and to develop it as an alternative systematic account of justice that is superior to utilitarianism. I thought this alternative conception was, of the traditional moral conceptions, the best approximation to our considered convictions of justice and constituted the most appropriate basis for the institutions of a democratic society (Rawls 2005:xv)

However, as seen, Rawls’ approach is fundamentally flawed and only reinforces a *particular* vision of society, rather than setting out a conception of universal application. It may well be that his conception of justice as fairness is a morally good one. It may also be one that many people share. However such matters are not strictly important when evaluating whether *TJ* succeeds in achieving what Rawls intended. In the Preface to *TJ* he wrote of his aim

My ambitions for the book will be completely realized if it enables one to see more clearly the chief structural features of the alternative conception of justice that is implicit in the contract tradition and points the way to its further elaboration. Of the traditional views, it is this conception, I believe which best approximates our considered judgements of justice and constitutes the most appropriate moral basis for a democratic society. (Rawls 1971:xviii)

Rawls is engaged in setting out the way society should be organised and it is with this high standard in mind that in *PL* he acknowledges that he has not succeeded. Society is simply too complex for a comprehensive philosophical doctrine, like his, to dominate other conceptions of justice or other political philosophies.

Now the serious problem is this. A modern democratic society is characterised not simply by a pluralism of comprehensive religious, philosophical, and moral doctrines but by a pluralism of incompatible yet

reasonable comprehensive doctrines. No one of these doctrines is affirmed by citizens generally. Nor should one expect that in the foreseeable future one of them, or some other doctrine, will ever be affirmed by all, or nearly all, citizens. (Rawls 2005:xvi)

Griffin, who supports Rawls, summarises the shift from *TJ* to *PL* when he writes:

In his classic *A Theory of Justice*, Rawls had argued that “a[n] essential feature of a well-ordered society associated with justice as fairness is that all its citizens endorse this conception on the basis of ... a comprehensive philosophical doctrine.” In *Political Liberalism*, Rawls states that this account of justice is “unrealistic” and encounters a “serious problem.”... *Political Liberalism’s* theory of political justice is no longer based on a comprehensive liberal philosophical doctrine. (Griffin 1997:299)

Owing to society’s pluralism, conceptions of what is socially good vary too considerably for a single understanding to be regarded as normative. As a result Rawls shifts his advocacy of justice as fairness from being a comprehensive doctrine to become what he terms a “political conception of justice” (Rawls 2005:xli). Instead of being morally autonomous actors, individuals are recast by Rawls into political agents or citizens (Rawls 2005:xlili). This shift is highly significant in how *TJ* is to be seen. Instead of making a claim to be the normative liberal account for the organisation of society, a more modest suggestion is being made. *PL* shows that Rawls understood that he had to move away from that sort of unequivocal stance to one in which justice as fairness takes its place alongside other visions of society. This change is highly significant. *However, it should not lead to any suggestion that Rawls is withdrawing from advocating a wholly secular political philosophy.* Rather he is making a necessary adjustment that allows the approach advocated in *TJ* to make a contribution to attaining the freer and equal society that Rawls sees as desirable. This can be seen when Rawls’ later position is closely considered. This begins by noting a question that Rawls poses in the Introduction to *PL*.

How is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable religious, philosophical and moral doctrines? (Rawls 2005:xxv)

This question is not rhetorical. Rawls believes that such a society is inherently unstable. He refers to the possible conflict that could occur when two “salvation religions clash” (Rawls 2005:xli). Historically, Rawls suggests, a *modus vivendi* has emerged between such conflicting comprehensive doctrines. However, for a mature and more stable society to emerge, he argues that this needs to develop into an

“overlapping consensus of reasonable doctrines” (Rawls 2005:xli). Rawls describes this as a shared consensus on the meaning of justice between citizens which does not conflict with their particular circumstances (Rawls 2005:134). It is a major aim of *PL* to show how this may be done.

This shift in Rawls’ position has been interpreted as representing a more open attitude towards the place of Christianity in civil society. Nigel Biggar is one theologian who takes this view. In his essay *Not Translation, but Conversation: Theology in Public Debate about Euthanasia* (Biggar and Hogan 2009) he focuses on what he calls the “mature” Rawls. The ideas of Rawls that he has in mind that fit this description are those found in *PL* and two other later works of varying length and completion. These are *Reply to Habermas* (first published in 1995), and *The Idea of Public Reason Revisited* (first published in 1997). Biggar summarises the view that Rawls had towards religion in these works as reflecting one which shows he accepted ‘the fact of reasonable pluralism’ (Biggar and Hogan 2009:174). Biggar, although somewhat cautiously, concludes that Rawls adopted a benign and permissive attitude towards religious views, regarding them as “reasonable”.

The charitable judgement [of Rawls] is that the plurality of comprehensive moral doctrines, religious and philosophical, is not always the product of human ignorance or ill will, but sometimes of reasonable disagreements. (Biggar and Hogan 2009:174)

For Biggar this provides a basis upon which Christianity in *PL* can play a constructive part in shaping society (Biggar and Hogan 2009:175). He pursues this by putting forward a case against euthanasia using arguments that have a clear theological basis which he believes can be heard by theorists and policy makers who do not share that perspective.

Through this analysis and reflection, I hope that I have shown that a thoroughly theological argument need not consist of an alienating invocation of sectarian authorities, but can be accessible, rationally engaging, and even persuasive. (Biggar and Hogan 2009:161)

Clearly *PL* does indicate that Rawls shifted in his attitude towards religion (Rawls 2005:xvi). However, this can lead to an inaccurate appreciation of Rawls’ true views. *PL* does not contain a formal rescinding of his negative approach to religion. Despite the significance of the distinction Rawls makes between justice-as-fairness as a political rather than a comprehensive doctrine, it is a step too far to cut away entirely



the Rawls of *TJ* from the Rawls of *PL*. The distinction between *PL* and *TJ* over Rawls attitude towards religion is essentially technical rather than indicative of a personal embracing of religion as a source of benefit to society, especially as it is one brought about under the pressure of criticism. Even Biggar, who it has just been shown detects a shift in Rawls' approach between *TJ* and *PL*, is uncomfortable about how consistent Rawls' was in his new approach.

Rawls calls this developed expression of democratic common sense 'justice as fairness', and he tells us that it is 'freestanding' and 'independent'. What he means by this latter statement is ambiguous. On the one hand, there is the Kantian Rawls who claims a universal transcendence for justice-as-fairness: 'A political conception of justice is what I call freestanding . . . when it is not presented as derived from, or as part of, any comprehensive doctrine'; '[L]iberal political conceptions of justice . . . can be presented independently from comprehensive doctrines of any kind'. Such an intrusion of comprehensive doctrine into the political conception of justice simply does not square with the late Rawls's theory of political liberalism, and *it should therefore be put aside* as an inappropriate vestige of the Kantian thinking displayed in *A Theory of Justice* (1971). According to *Political Liberalism*, justice-as-fairness is only a limited, 'political' conception, not a comprehensive one. (Biggar and Hogan 2009:175 italics added)

It is not clear why the description of justice-as-fairness as freestanding and independent means that it is not to be regarded as part of a comprehensive scheme. Even if a judicious interpretation of the later Rawls leads to interpreting *PL* in a manner that concedes that the automatic and necessary exclusion of religion is unreasonable, it does not follow that there is as a result a more amenable Rawls who has departed from the approach of *TJ* and who is prepared to embrace religion as a partner in public philosophy.

That Rawls did alter his rhetoric about religion is not in dispute. However, he did so not because he had come to see religion in a positive light. For the later Rawls, religion is capable of being counted as reasonable in society only because of difficulties in his scheme set out in *TJ*. His role for religion is one that is driven to because his alternative approach fails, rather than one that arises as a recognition that it is a desirable aspect of a pluralistic society. There is no other substantial withdrawal of the secular humanism of *TJ*. *PL* is a necessary re-statement of the key concepts of *TJ*, as a cursory glance at the contents of the book reveals, rather than a major reshaping of the cast of his thought.

Like Biggar, Griffin (1997) is an advocate of seeing the latter Rawls as someone who shifted in his approach and who therefore would not share the sceptical approach argued for here. Although he wrote as a Law academic, he suggests that religion was for Rawls, in a qualified sense, at the centre of his concerns:

To some extent, religion is the source of Rawls's project; the "historical origin of political liberalism ... is the Reformation and its aftermath". After the Reformation (and in contrast to the ancient world), deep and irreconcilable differences in religious belief occur. "Political liberalism starts by taking to heart the absolute depth of that irreconcilable latent conflict." (Griffin 1997:298)

This evaluation of Rawls is followed by an analysis by Griffin which recovers from that misleading thought. Griffin sets out Rawls' ideas in *PL* to argue that he had did have a changed view concerning justice-as-fairness which is as set out above: "... a political conception of justice is not itself a comprehensive doctrine." (Griffin 1997:302) Griffin's conclusion however is wrong. This view arises out of considering the *presuppositions* that underlie the approach that Rawls takes in *PL*.

## VI

### Rawls' sleight of hand

An accurate way of seeing Rawls' later attitude towards religion can be found in *PL* where he examines the political conception of the over-lapping consensus which is a key development between *TJ* and *PL*. In §4 of Lecture IV entitled *An Overlapping Consensus not Indifferent or Sceptical* Rawls deals with the question of whether the adoption of a political conception of an overlapping conception is at the sacrifice of truth (Rawls 2005:150).

Rawls suggested that he is arguing for a pragmatic position; in the Introduction to *PL* he states that reasonableness is more fundamental to creating stability than is truth (Rawls 2005:xx). Thus, so he would have his readers think, Rawls is neutral on the merits of any comprehensive view. What matters is the commitment that holders of different views in a pluralistic society have towards a position of consensus. Therefore anything to do with truth, in any deep theological or philosophical sense, is not his concern, it is consensus that matters:

... since no political agreement on those disputed questions can be expected, we turn instead to the fundamental ideas we seem to share through the public political culture. (Rawls 2005:150)

However, it may be argued, Rawls' viewpoint is not as relaxed as may be thought. According to Griffin, while Rawls is clear in disallowing state coercion to uphold the kind of plurality that he appears to advocate (Griffin 1997:302), critics have suggested that, in fact, Rawls relies upon an underlying comprehensive scheme in the form of Kantianism, a criticism that Griffin concedes may be true (Griffin 1997:304). Political liberalism creates a public space within which philosophically (and theologically) competing worldviews can be tolerated if they concede to an unstated categorical imperative. Rawls' political liberalism consists of a fundamental requirement to which those who hold comprehensive worldviews need to submit. Liberalism, it follows, is in actual fact the dominant worldview according to Rawls.

In the absence of an acknowledgement of this by Rawls, this leaves open the question of whether what constitutes a consensus is vulnerable to attack on the grounds that it lacks any substantial philosophical content. Whilst Rawls states that consensus is based upon reasonable doctrines (Rawls 2005:xxxiv), without a more precise basis he leaves himself open to the charge that there is a vagueness concerning political and legal interpretations of what constitutes 'reasonable'. This is more than a theoretical difficulty. Without the clarity provided by at least seeking to approach the question of whether something may be true, then what is reasonable does sound very similar to what is convenient or congenial.

Without acknowledging this, Rawls does concede however that on some occasions the moderate pragmatism he is putting forward may be impossible.

Certain truths, it may be said, concern things so important that differences have to be fought out ... (Rawls 2005:151)

When such events occur Rawls writes that the controversy should be allowed to be worked out (Rawls 2005:151). However, as a prerequisite to this occurring, certain matters have to be accepted as *sine qua non*. It is at this precise point that Rawls' views in *TJ* and *PL* reveal a consistency towards religion that leaves no grounds to be misunderstood. He does this with a manner that can be described as casual as it occurs in what appears to be a passing remark.

To illustrate: from within a political conception of justice let us suppose we can account for both the equal liberty of conscience, *which takes the truths of religion off the political agenda ...* (Rawls 2005:151 italics added).

In this comment Rawls is summarising the consistent view he has about religion. As each individual has the same intrinsic worth, then the ideas that each holds must also have the same merit. Therefore an appeal to religion, or indeed any tradition, for authority, is unacceptable. Unless this is appreciated, real difficulty will follow, as he suggests a little later.

By avoiding comprehensive doctrines we try to bypass religion and philosophy's profoundest controversies so as to have some hope of uncovering a basis of a stable overlapping consensus. (Rawls 2005:152)

Rawls' adoption of overlapping consensus as an aspect of public reasoning means that certain views have to be ignored, even repressed if necessary.

... whenever someone insists, for example, that certain questions are so fundamental that to insure their being rightly settled justifies civil strife. The religious salvation of those holding a particular religion, or indeed the salvation of a whole people, may be said to depend on it. At this point we may have no alternative but to deny this, or to imply its denial and hence to maintain the kind of thing we had hoped to avoid. (Rawls 2005:152)

The inescapable conclusion of this section of *PL* is that ultimately Rawls' overlapping consensus does, in fact, rests upon a common feature found in *TJ*: the illegitimacy of religion in the public space. This means that there is a comprehensive view at work in *PL*: that of humanistic secularism. In both *TJ and PL*, Rawls advocates with complete consistency, the *a priori* placing of religiously derived ideas and behaviour outside the public square.

For many the true, or religiously and metaphysically well-grounded, goes beyond the reasonable. (Rawls 2005:153)

In his final remarks in this part of *PL*, Rawls shows that the idea of an overlapping consensus is actually little more than a sleight of hand. It is a means of placing his fundamental concept of justice as fairness beyond contention. What he has done is create a conceptual category which excludes, using his term, comprehensive doctrines. Metaphorically, comprehensive doctrines belong in the deep, deep storage of Rawls' cellar where they can be carefully packed away. For Rawls the focus is on an expanding modernity.

Were justice as fairness to make an overlapping consensus possible it would complete and extend the movement of thought that began three

centuries ago with the gradual acceptance of the principle of toleration and led to the nonconfessional state and equal liberty of conscience. This extension is required for an agreement on a political conception of justice given the historical and social circumstances of a democratic society. (Rawls 2005:154)

It is important to recognise Rawls' subtlety. He is utterly consistent throughout his career in his rejection of Christianity as having a legitimate contribution to public policy matters. *PL* is another means, after the failure of *TJ* to keep religion away from the public square.

Wolterstorff, mentioned earlier, challenges the sort of position that Rawls holds by considering the claims of liberal theorists and exposes a significant faultline. While Rawls is sceptical of the role of religion in public life, the foundation for a liberal society according to Wolterstorff is the upholding of certain fundamental rights (Biggar and Hogan 2009:35). Foremost amongst these is religious freedom and tolerance. While the later Rawls accepts that religion is an enduring, if clearly unwelcome, aspect of a pluralistic society which needs to be tolerated in order to create social stability, for Wolterstorff people who hold a religious worldview should be recognised as having a strong positive endorsement of liberal democracy. It permits them not simply to be tolerated as intellectual and moral recalcitrants, as Rawls give the clear impression of doing, but as active participants in an arrangement that guarantees them the right of expression as people who have the "worth of a creature made by God in God's own image" (Biggar and Hogan 2009:36). Wolterstorff establishes that religion is not therefore fundamentally inimical to liberal democracy, but actually a strong promoter of it.

That Rawls was consistent in his disinclination towards religion having a legitimate role in the political aspects of society is indicated by the last significant work that Rawls undertook before his death. In 1998 he was working on a revision of *PL* which he never completed. However an article entitled *The Idea of Public Reason Revisited* (PRR) contains the thinking that he wished to incorporate into *PL* (Rawls 2005:438).

In a letter written to his editor in 1998, Rawls wrote that his thinking on what constituted public reason had changed and that he had revised his views. Concerning it and religion he wrote:

In particular, I stress the relation of public reason and political liberalism to the major religions that are based on the authority of the church and sacred text, and therefore are not themselves liberal. Nevertheless, I hold that, except for fundamentalism, they can support a constitutional democratic regime. This is true for Catholicism (since Vatican II) and much of Protestantism, Judaism and Islam. (Rawls 2005:438).

For an explanation of how this is possible, it is necessary to refer to §4 of *PRR*. In the opening paragraph of this part of *PRR*, Rawls writes that:

... reasonable comprehensive doctrines, religious or nonreligious, may be introduced in public political discussion at any time, provided that in due course proper political reasons – and not reasons given solely by comprehensive doctrines – are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support. (Rawls 2005:462)

He goes on, in the same paragraph, to suggest that there may well be “positive reasons for introducing comprehensive doctrines into public political discussion”.

However, to appreciate that Rawls has not in fact undergone the fundamental change in his approach to religion it is only necessary to analyse carefully what he has actually written because, as is apparent, Rawls is utterly consistent in upholding the primacy of liberal secularism over other comprehensive views. This is evident because this paragraph from *PRR* clearly means that ideas that originate from a religious milieu, as an example of a comprehensive doctrine, must *ultimately* be validated as legitimate because they meet the standard of being “proper political reasons”. In other words, the only what counts for Rawls is that the Gold Standard for reasonableness is that which is understood by secular humanists, like himself.

It is possible to see why Biggar is inclined to believe that it is possible to distinguish between the early and, to use Biggar’s own term used above, mature Rawls. It must be stated that Rawls is not wishing to be belligerent or argumentative: the tone of *PRR*, as indicated by his comment that there may be good cause for drawing on comprehensive doctrines, is inclusive. However, it would be fundamentally erroneous to misconceive Rawls’ fundamental view.

A helpful way to appreciate this is to engage with the meaning of the covenant-idea that was made in Chapter Two. There it was suggested that Elazar's definition of a covenant was authoritative, a view upheld by the extensive discussion that followed.

A covenant is:

A morally-informed agreement or pact based upon voluntary consent and mutual oaths or promises, witnessed by some transcendent higher authority, between people or parties having independent status, equal in connection with the purpose of the pact, that provides for joint action or obligation to achieve defined ends (limited or comprehensive) under conditions of mutual respect which protect the individual integrities of all the parties to it. Every covenant involves consenting (in both senses of thinking together and agreeing) and promising. Most are meant to be of unlimited duration, if not perpetual. Covenants can bind any number of partners for a variety of purposes but in their essence they are political in that their bonds are used principally to establish bodies political and social. (Elazar 1998:23)

This definition, with its key reference to "some transcendent higher authority", it can be reasonably claimed, is a meaningful one. To show that this is the case one only need to take religious sceptics who believe religion *in itself* adds nothing to the true meaning of public understanding at their word, among whom Rawls counts, to see that shorn of religion the essence of the meaning of the covenant-idea is lost. If the covenant-idea is denied its roots in the Judeo-Christian theology, then its meaning is seriously undermined and attempts, such as those of Tipping and Walters which were also discussed in Chapter Two, to find alternative interpretations that are essentially secular, unsuccessful.

What emerges is that the covenant-idea can only operate correctly if at least the idea of God, as the clearest meaning in this context of transcendence, is allowed used, as a minimum, in at least in a non-realist and wholly figurative sense. Even if theological reasoning is limited to this fairly minimal manner there is, nonetheless, something very significant occurring. Contra Rawls, secular humanism and the public square is being penetrated by terminology that is wholly inimical to its own tradition. What is being shown is that the idea of the sacred provides meaning in a way that cannot be reduced to non-religious categories.

## VII

### Concluding remarks

In *TJ* a method is set out which claims to be capable of transforming society upon principles of liberty and equality. Justice-as-fairness is not a mere slogan. In the previous chapter in which *TJ* was set out, attention was drawn to the centrality of justice. Rawls accompanies this by stating that if it can be shown that the arrangements of a society are unjust, then reform must follow (Rawls 1971:3). Implicit in this is the sense that *TJ* sets out a conception of how a just society may be achieved. Rawls therefore creates a standard in which the bar is set very high. It therefore follows that the consequences of criticisms set out above are critical in determining whether it meets this measure. In the light of the criticisms that have been referred to however, the judgement that must be reached is that *TJ* fails to set out an accurate basis upon which a comprehensive account of what the good society can be established. Central to this is the criticism over patterning that Nozick sets out. Instead of being a dispassionate and reasonable view of justice, Nozick shows that it is a highly engineered conception in which liberty is deeply circumscribed. This then leads to the further criticisms which are to do with Rawls' account of human nature.

*PL*, of course, concedes that Rawls was aware of problems. However, the fact that it does so should not disguise this defeat by allowing the recasting that takes place in *PL* to hide it. Similarly, Rawls' attitude to religion should not be allowed to be misunderstood. Despite the change that took place in the later Rawls, it is here contended that his negative attitude to religion is consistent throughout his career.

Nonetheless, despite this conclusion, perhaps contradictory, the influence of Rawls is not to be understated. Even if his theories are open to criticism, he continues to be highly influential. This is accounted for because *TJ* represents something of the post-Second World War liberal perspective that unquestionably characterised that period. Ideas, it is clear, have a context into which they emerge. *TJ* is not an exception; it can be argued that historically it relates closely to a time when there



was a widespread belief in universal rights or entitlements of various kinds. This movement continues to the present time.

While it fails on its own terms, *TJ* therefore remains a vibrant statement, almost an embodiment, of the intellectual and social trend that has characterised recent decades. It therefore remains a powerful means by which existing and emerging ideas and institutions can be scrutinised. This is why it is a relevant task to consider the Military Covenant in the light of *TJ*. Not only is it tested in a technical sense, it is equally tested in a wider sense too. From the perspective of prevalent ideas in society, is the Military Covenant reasonable or should it be challenged as a piece of special pleading by an element of society that should be kept under careful surveillance?

## **Chapter Five**

### **The Military Covenant and Rawls**

In this chapter, close consideration of Rawls' conception of justice found in *TJ* and the Military Covenant will be made, with the second question from Chapter Two in mind. This question is whether the implicit claim of the Military Covenant, that the British army needs to be different from society, and therefore requires special consideration in order to be militarily effective, can be considered just in the light of the ideas of John Rawls. In this chapter further features of Rawls' scheme will emerge and developments of his thinking which appeared after *TJ* in later works will also be discussed.

In Chapter One the key role of public support to the effectiveness of UK armed forces was set out, and an explanation given to how this found a tangible expression in the Military Covenant; in return for the commitment required, soldiers are entitled to receive commensurate practical consideration. This is designed, deliberately, to add to the efficiency of the army by contributing to the moral component of fighting power which is of increasing importance in contemporary conflicts.

Despite this support, the level of expenditure of national treasure is subject to pressures and concerns that have to be addressed. The extent to which the Government is free to resource the military is constrained by at least two factors. Firstly, the financial expenditure allocated to the armed forces has to be balanced against all the other requirements that the Government is expected to meet. Secondly, there are issues within mainstream political conversation about the suitability of certain weapon systems from a moral and a financial position. The appropriateness of UK expenditure on nuclear weaponry is a recurrent topic for both reasons.

However, this thesis is not concerned with these political questions, but with the fundamental question that arises out of *TJ* of whether the Military Covenant leads, in Rawlsian terms, to a distortion of the basic structure of society. There is at least a *prima facie* case, by implying that the army generally and service personnel individually merit a higher degree of esteem beyond that given to other UK subjects,

as well as practical resources, to be examined in the light of Rawls' concept of fairness and whether, as a result, this is acceptable. A representative case to test this is provided by considering how the position of a pacifist or a conscientious objector works out. Initially in what follows, these terms are used inter-changeably; however a distinction will soon be made.

A British pacifist may believe that the Military Covenant, based upon Rawls' conception, is a breach of his entitlement to an equal allocation of basic liberties under the first principle. They may base their argument upon Rawls' comment that justice is the standard to be applied to the 'basic structure of society' (Rawls 1971:6) and that one of the signs of this is the 'legal protection of freedom of thought and liberty of conscience' (Rawls 1971:6). This, arguably, is the high-water mark of Rawls' commitment in *TJ* to personal liberty. Perhaps therefore because it is the outer boundary of his conception, care must be taken, as it could lead to a distortion of Rawls' overall position. This is because it isolates his commitment to liberty from his conception as a whole. Rawls did not consider liberty as an abstract principle that is to be adhered to at all costs (Freeman 2007:45). Such a view he regarded as unrealistic. Whilst the state is not entitled to set aside liberty for some greater good (see Rawls 1971:3 and 54), there are occasions when what is to be done in the interests of liberty is not easily apparent. It is for that reason he prefers to discuss not liberty per se, but rather 'basic liberties' which Rawls connected to specifics.

Important among these are political liberty (the right to vote and to hold public office) and freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person, which includes freedom from psychological oppression and physical assault and dismemberment (integrity of the person); the right to hold personal property and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law. These liberties are to be equal by the first principle. (Rawls 1971:53)

He goes on to explain that

These liberties have a central range of application within which they can be limited and compromised only when they conflict with other basic liberties. Since they may be limited when they clash with one another, none of these liberties is absolute; but however they are to be adjusted to form one system, this system is to be the same for all. (Rawls 1971:54)

For Rawls therefore, in the interests of justice, basic liberties have to be adjusted in relation to one another. The liberties that one individual enjoys should be compatible

with those that another is allowed to have. Thus what is a freedom granted to one must be a freedom for all. Therefore the liberty of conscience that enables a pacifist conscientious objector morally and legally to denounce the Military Covenant is balanced by the liberty another has to equal goods that it is designed to bring about and which can be enumerated from the list of basic liberties above.

The implications of this are apparent in Section 58 of *TJ* where Rawls specifically discusses what he terms conscientious refusal (Rawls 1971:331ff). A key part of his approach, but which is covered rapidly in the text, is to dismiss conscientious objection when it is based on religious grounds. This is despite the clear and enduring pacifist tradition that rests on a religious foundation and is a reflection of the radical effect that his thought has on long-established positions and traditions that was identified earlier. For Rawls, the only legitimate grounds, and therefore those only worth considering, are those that arise out of his scheme.

I assume that this refusal is based upon political and not upon religious or other principles; that is, the principles cited by way of justification are those of the conception of justice underlying the constitution. (Rawls 1971:331)

This reflects the conception of society that was discussed earlier in Chapter Three. For Rawls the only reasonable grounds for political discussion are those compatible with his theory. Pacifism which is based upon religious conviction is not a legitimate expression, as religious belief is not something that all citizens can share. The only legitimate grounds for conscientious objection therefore on political grounds, are issues that coalesce around a particular event. Only conscientious objection that is based upon a premise that is explicable to reasonable people is tolerable. He bases his argument on an extended discussion of Just War theory (Rawls 1971:332-35). So long as a conflict can be regarded as reasonable and lawful in the circumstances, then its prosecution is legitimate. However, if a conflict falls short of this, then opposition to it by refusal to take part is also legitimate.

What is needed, then, is not a general pacifism but a discriminating conscientious refusal to engage in war in certain circumstances. States have not been loath to recognize pacifism and to grant it a special status. The refusal to take part in all war under any conditions is an unworldly view bound to remain a sectarian doctrine. It no more challenges the state's authority than the celibacy of priests challenges the sanctity of marriage. By exempting pacifists from its prescriptions the state may even seem to display a certain magnanimity. But conscientious refusal based

upon the principles of justice between peoples as they apply to particular conflicts is another matter. For such refusal is an affront to the government's pretensions, and when it becomes widespread, the continuation of an unjust war may prove impossible. (Rawls 1971:335)

From this point on, therefore, a distinction needs to be made between pacifism, which rejects completely in principle the use of violence as a moral policy for the state, and conscientious objection, which is used to denote a political rejection of military force in a particular set of circumstances.

This is reinforced in Part Two of *TJ* where Rawls applies his conception of justice to institutions. An important part of this involves considering liberty (Rawls 1971:176ff) further. His approach is consistent with what has been outlined above. He again discusses liberty in relation to practical entitlements (Rawls 1971:176). Shortly after this he goes on to consider one of these entitlements which is highly relevant to the case of the conscientious objector, the place of conscience.

If, for example, we consider liberty of conscience as defined by law, then individuals have this basic liberty when they are free to pursue their moral, philosophical, or religious interests without legal restrictions requiring them to engage or not to engage in any particular form of religious or other practice, and when other men have a legal duty not to interfere. (Rawls 1971:177)

This statement may appear to express the entitlement an individual has to liberty in clear terms so as to make pacifism reasonable. Individuals are free; as a function of that condition they are entitled to live in such a manner that follows. Thus pacifists must be entitled to follow the consequences of their rejection of military force. In practical terms this must allow them the full right to express their opinion without any risk of harm in any way by the state. They must also be entitled to exemption from military or related service, such as forced substitutionary activity during national emergency. It may also include the payment of taxation which is used for military purposes, such as the purchase of weapons and the payment of soldiers.

However, to present Rawls as advocating this radical position is mistaken. Intriguingly, Rawls mirrors St Paul when he taught that in Christ a person is given freedom. Conversely that freedom is not a licence to do as one pleases. Life is to be lived with a sense of responsibility and a Christian's freedom is not permission for

evil behaviour (see Romans 5-6). Both Paul and Rawls are therefore not antinomians. Whilst Rawls is clearly an advocate of liberty, it is liberty within the law. The liberty that pacifists claim to express their view, rests upon the formal protection offered by the law of a state which they will not defend in extremis. A conscientious objector will privately hold his position in the face of any challenging prevailing political or cultural attitude towards his view. However, its practical expression rests upon public toleration. This mark of civility is something that a pacifist exploits unjustly. The right a pacifist has to liberty of conscience is out of balance in relation to other basic liberties.

In practice what emerges is the sort of situation that is found in Western democracies at the present time. Pacifists have the right to argue and demonstrate their belief that war is an unmitigated evil and to withhold themselves from military service. Yet others, clearly the majority, hold that while armed conflict is not good, it is something that may have to be undertaken to prevent worse evil and, therefore, has to be prepared for. More broadly, pacifism leads to a problem that Rawls gave attention to in *TJ*. If conscientious objectors can legitimately refuse to participate in military service, they nonetheless benefit from the security provided by those who are willing to undertake such service. The state therefore provides security for those citizens who are not prepared to make a contribution. Rawls refers to this as the 'problem of the free-rider' (Rawls 1971:236ff) and his solution is startlingly practical. Without dealing with the arguments of conscientious objectors in any manner, Rawls simply states that as all citizens benefit from the state's provision of defence, all have an obligation to contribute to its payment. In this matter the state is entitled to use legal coercion.

So what are the implications for the Military Covenant? The case that principled pacifism is consistent with *TJ* is dismissed by Rawls. Notably he does so not by debating it as a viewpoint to show how it is an erroneous position but, because he connects it to a religious standpoint, he dismisses it as unreasonable. On the other hand, Rawls does allow for conscientious objection on pragmatic grounds. If the justification for a conflict is contentious, then there is a political basis for dissenting against the conflict's continuation. The significance that arises from this nuanced

position for the Military Covenant is that *TJ* does not in principle oppose it. Rawls is clearly not a pacifist and therefore it is reasonable to suppose he recognised the merit of the armed services and that practical arrangements have to be put in place for their sustainment. However, it is equally clear from the material considered that Rawls wished individuals to retain the responsibility for opposing unjust conflicts.

The discussion so far has been based on the first principle. However, the second principle must also be engaged with, as the Military Covenant states that in return for the sacrifice that military service requires, soldiers and their dependents are entitled to receive due consideration that reflects their service. There is an implication that military personnel are therefore entitled, ahead of other citizens, to social and welfare, if not directly economic, benefits. The second principle is concerned with such a situation.

One practical outcome of the Military Covenant was the publication in 2008 of *The Nation's Commitment: Cross-Government Support to our Armed Forces, their Families and Veterans* which is usually referred to as the Service Personnel Command Paper. The purpose of this publication was to enable the Government to set out a number of entitlements in areas of concern to serving members of the forces and their immediate families. It covered matters from the payment of compensation to injured soldiers through to health, education and housing. Notable in its provision was the establishment of an External Reference Group, with members from veterans and service family organisations, which was linked to the Cabinet Office, and was tasked with the responsibility of monitoring and reporting on the various pledges that the Command Paper contains. One year after its publication, this body issued a progress report on its implementation.

The Service Personnel Command Paper does not explicitly refer to the Military Covenant. One reason may be the tri-service nature of the Command Paper. It will be remembered that in Chapter One it was shown that the origins of the Military Covenant lie in the army. However the concerns of the paper as well as its tone link it implicitly with the Military Covenant. This is most clearly shown in the Foreword which was written by the then Prime Minister, Gordon Brown.

The nation has a commitment to our Service personnel, their families and veterans. This requires us to ensure that the unusual demands of serving in the Armed Forces do not result in unfairness for those who serve and to recognise the special sacrifice made by some members of the Armed Forces and their families. (Service Personnel Command Paper 2008:5)

Apart from the redolence of the language to the Military Covenant, the other notable feature of Brown's statement is the reference to fairness. This connects it with the Rawlsian concern that society is based upon justice as fairness. However, the manner in which fairness is discussed is in negative rather than positive phraseology. Rather than explain that due to their limitless commitment and the consequences of a disrupted lifestyle, which membership of the armed forces necessitates, service men and women and their direct families merit additional benefits, the Prime Minister comments instead that they should not, experience 'unfairness'. This manner of presentation presumably reflects some political sensitivity to any suggestion that might imply positive discrimination towards them. On the other hand the use of 'recognise' in the same sentence does imply an element of additional entitlement.

Rawls introduced his second principle because he was not content to limit his notion of justice to philosophical and political concepts alone. For him the enjoyment of basic liberties without the economic means to do so was unrealistic (Freeman 2007:91). Rawls' concern was not so much for the individual as some kind of isolated heroic figure; the well-being of individuals ('representative persons') is achieved by a just society (Rawls 1971:56). This is the key to how the second principle should be understood when considering the Military Covenant. The implicit allocation of resources to the military is justified so long as society as a whole benefits. This is the intention of the Service Personnel Command Paper.

This conclusion is in line with those places in *TJ* where Rawls considers how his conception fits into the practical world of constitutional and political arrangements. He is entirely prepared to recognise that some accommodation between his scheme and practical experience has to be made. This is illustrated in Section 34 which is entitled "Toleration and the Common Interest". Here Rawls scrutinises the extent to which liberty can be morally restricted by the state in order to safeguard the



legitimate needs of society. Philosophically, the balance between the liberty of the individual and society is inherently an intractable problem. Rawls' attempt to provide a resolution is based upon the view that the individual's best interests are served by some curtailment of liberty so that the state can provide an environment for human flourishing.

Liberty of conscience is limited, everyone agrees, by the common interest in public order and security. (Rawls 1971:186)

The expression 'everyone agrees' appears a remarkably loose one. He places his argument on firmer ground when he chases it back to the original position in a passage that summarises his whole argument.

Granting all this, it now seems evident that, in limiting liberty by reference to the common interest in public order and security, the government acts on a principle that would be chosen in the original position. For in this position each recognises that the disruption of these conditions is a danger for the liberty of all. This follows once the maintenance of public order is understood as a necessary condition for everyone's achieving his ends whatever they are (provided they lie within certain limits) and for his fulfilling his interpretation of his moral and religious obligations. To restrain liberty of conscience at the boundary, however inexact, of the state's interest in public order is a limit derived from the principle in the common interest, that is, the interest of the representative equal citizen. The government's right to maintain public order and security is an enabling right, a right which the government must have if it is to carry out its duty of impartiality supporting the conditions necessary for everyone's pursuit of his interests and living up to his obligations as he understands them. (Rawls 1971:187)

This passage introduces an expression that captures and summarises an implication of Rawls' scheme. Whilst liberty has a priority and social and economic arrangements in society should contribute to as wide an experience of it as possible, then the notion of a 'common interest' follows. In order for liberty to be a widespread good in society there must be a practical arrangement which allows this flourishing. This arrangement is the common interest: citizens have a reasonable and positive commitment to a specific political, social and economic arrangement. As discussed in Chapter Four, this is, for Rawls, a liberal-democratic constitutional arrangement.

Rawls specifically identifies common interest (Rawls 1971:83) as applying to public order and security (Rawls 1971:217). For society to be capable of enduring so that liberty and related basic goods are practised, then the means of legitimate protection

are appropriate and need resourcing. This therefore means that the rather anaemic conclusion arrived at above, when discussing the first principle, can be strengthened. There is nothing incompatible about Rawls' scheme and the Military Covenant. Indeed, it is in the interest of the common good to ensure that, with the second principle in mind, adequate arrangements are made to ensure that the state has sufficient means to operate under just war principles.

In light of the earlier discussion concerning pacifists and those who on political grounds have a conscientious objection to the military, while their objection must be voiced and which to some extent may well work to moderate a tendency towards militarism, this conclusion has a robust quality. More than utilitarianism is involved here: the common good in Rawls' conception is not a scenario in which the majority benefit at the cost of the few. The common good is the means by which all, even free-riders, which means pacifists in this context, benefit despite themselves. UK armed forces serve all UK subjects. This has been demonstrated by the case of Norman Kember, who while working as a Christian pacifist in Iraq in 2006 was rescued from kidnappers by members of a military force that included UK troops.

This conclusion is interesting when placed into the narrative of Rawls' life. In a later chapter of this thesis, it will be explained that Rawls saw active service in the Second World War and that the impact of those events had a profound effect in transforming the outlook of the young and earnest Christian undergraduate into the deeply sceptical academic of his mature years (see Freeman 2007:3). However, the combat and related experience that Rawls underwent also played a significant role in shaping the position that Rawls adopted in relation to the most significant foreign policy issue for the USA during the five years either side of publication of *TJ*. The Vietnam War cannot be ignored when considering Rawls and his attitude to the military in society.

A feature of Rawls' career was that he was not drawn to participation in politics or public affairs by becoming an active campaigner. When he considers Rawls' contribution to contemporary thinking outside of academia, Freeman concludes that it is "nil" (Freeman 2007:457). However, Pogge's survey of Rawls' life, whilst

demonstrating that he was principally an academic, shows that in relation to the Vietnam War he was a publically committed opponent. According to Pogge (Pogge 2007:19) Rawls saw the war as unjust. In 1967 he participated in an anti-war conference held in Washington and in the spring of 1969 he taught a course on the “Problems of War” at Harvard in which he suggested that US participation was due to the disproportionate influence of wealth which was translated into political influence. This analysis follows easily with the outlook found in *TJ*. Pogge makes this connection and links it to a comment made about the corrupting influence of wealth and economic interests in *TJ* (Pogge refers to Rawls 1971:197). Rawls’ opposition resembles the position of the conscientious objector mentioned earlier in this discussion. Rawls was opposed to the war on what he regarded as specific political grounds provided by just war theory, rather than because he had a principled opposition characteristic of the pacifist.

Given the personal qualities that are widely ascribed to Rawls, the rightness of any war would have been a clear issue. Although he regarded the Vietnam War as wrong, he was no defender of the Westphalian system of state sovereignty. It is noteworthy that in *The Law of the Peoples* published in 1993 he foresees grounds when intervention by one state into the affairs of another sovereign power is legitimate. Freeman explains that in *The Law of the Peoples* Rawls distinguished between liberal rights that confer the opportunity for the “full development and adequate exercise of moral powers in a liberal and democratic society” and human rights which allow for “the most basic development and exercise of the moral powers” necessary for the participation in any society. Should any state turn against its own people and deny them human rights, “it forfeits its right to rule and represent them as a people” (all from Freeman 2007:436). If no other remedy can be found, it is legitimate for war to be waged against such a state (Freeman 2007:437).

This chapter began by returning to the question of whether the Military Covenant is compatible with *TJ*. To reach a conclusion the two principles of justice set out in *TJ* were considered. The first principle was tested by considering the pacifist position which is bound to find the Military Covenant objectionable. What emerged was a distinction between principled pacifism and a prosaic conscientious refusal to

support military activity. Rawls repudiates pacifism. He does so as it lies outside what he considers most people regard as reasonable. Fundamental to this rebuttal is the connection Rawls makes between pacifism and religion. In his characterisation, pacifism rests upon religious beliefs that are not shared by everyone, and he shows ruthlessness in pursuing this argument. As they benefit from the security offered by the state without a willingness to participate in its achievement, pacifists are what he terms free-riders. In the extreme they can be prosecuted.

Whilst Rawls is dismissive of pacifism, the position of the conscientious objector and the Military Covenant is different. Rawls regards the position of the conscientious refuser as being essentially a political matter when compared to the fundamental philosophical concern of the pacifist. As a result he sets out an approach which allows each individual to make a judgement about military matters that is based upon just war theory. If a conflict is legitimate against the criteria of the theory then conscientious objection is wrong. However, if a conflict breaches the criteria, then opposition is reasonable. This position, it was suggested, reflects Rawls' own attitude towards the Vietnam War. Rawls regarded this approach as being essentially a political act, although he also allowed religious and other reasons to be relevant too (Rawls 1971:324). Despite this biographical material, the overwhelming conclusion that emerges is that based upon the arguments set out by Rawls in *TJ* the Military Covenant is an entirely reasonable policy.

This conclusion also emerged when the second principle was considered. This was done by referring to the Service Personnel Command Paper as it sets out a favourable entitlement for service personnel to receive goods and services over ordinary members of the state. It is clear that the Military Covenant, so long as its political legitimacy is secure, is perfectly acceptable with the second principle. It allows the allocation of an additional entitlement of goods to military personnel in order to achieve the effectiveness that is an essential aspect of the armed forces. While reaching this conclusion, a noteworthy feature of the second principle emerges. Not only does the principle act in a normative capacity by setting out, in accordance with Rawls' conception, a practical expression of justice, it also acts as a

test of an aspect of public policy by measuring whether it is compatible with this system.

Lying behind this discussion, particularly with regard to the second principle, lies the idea of common interest (Rawls 1971:83). This is an expression Rawls coins to capture the practical experience of living within the state. It connects with the contract theory of Locke as it rests upon the understanding that if an individual is to flourish, then in return for goods that the state is best placed to provide, such as security, an individual hands over a measure of their liberty. This is significant, as it suggests that, ultimately, in the balance between the rights of the individual and those of society, Rawls falls in favour of the latter. He widens his conception of justice away from the individual towards the well-being of society in general which is entirely in accordance with his intention (see Rawls 1971:6 discussed in Chapter Three above). Clearly, a strict libertarian is likely to have a serious principled problem with this. The sovereignty of the individual is plainly moderated in a major way. However Rawls successfully offers a way in which the position of the individual is placed in the wider context of the community. By surrendering to the state the individual's degree of liberty is paradoxically increased.

In reaching the conclusion set out here, it is apparent that Rawls belongs to the view of Adam Smith who stated that the principal purpose of the state is to defend its subjects from the military predation of other states (*The Wealth of Nations* Book V Chapter 1 *Of the Expense of Defence*). This view of the state is axiomatic for its legitimacy. It is therefore also the foundation for what the Military Covenant describes as the unequal and absolute expectation and requirement placed upon military personnel to protect the state. Although this is fundamental, it is an understanding that has been overlaid with a misconceived and alternative conception of the purpose of the state. The British experience is typical of this and can ironically be illustrated by the underlying agitation amongst organised labour during the closing period of the Second World War. The leading popular historian of the post-war period, AJP Taylor, describes this as the background for the emergence of the Welfare State.

This demand (by organised labour) was hard to resist. The governing classes were on their best behaviour, from conviction as well as from

calculation. It was difficult to realize in a time of national inspiration and unity that this inspiration and unity would ever fade. The British people had risen, without fuss, to unparalleled heights of sacrifice and resolution. They deserved a reward. The most substantial of these rewards was a plan for universal social security, worked out by Sir William Beveridge. (Taylor 1977:567)

The author of the Beveridge Report recommended that the government should find ways of fighting the five evils of want, disease, ignorance, squalor and idleness. Although the terminology is now dated, the themes remain powerful in describing the principal activity of western governments and international agencies. Even the USA, with its more individualistic culture, sees the role of the state chiefly as ensuring the prosperity and well-being of the population, as indicated by the New Deal of the 1930s. *TJ* belongs to the intellectual movement that accompanied this seismic shift in people's expectations. As an American, Rawls shares an outlook that reflects his own country. However there is a sufficient sharing between the US and Europe to place him in this cultural change of which Beveridge is another characteristic.

It is therefore striking that when *TJ* is examined, its liberal tone is nonetheless built upon Smith's deeper understanding of the purpose of the state. Whilst the modern state, largely because of the two world wars that led to an abhorrence of conflict, is still orientated towards the attainment of universal well-being, the imperative of security is still vital.

This chapter began by referring to the issue of whether the Military Covenant can be justified in the light of the ideas found in *TJ*. What has emerged, with some strength, is that there is substantial compatibility between the two. Rawls understood the need for security and accepted positively that the state had to make reasonable provision to achieve it. As the Military Covenant is designed to contribute to this, it is something that can sit with some comfort with both the first and second principles and their attendant resultant conceptual framework.

However there is a very significant further matter that emerges from this. This is connected closely with the first question that was raised in Chapter Two; what is the Military Covenant and how does it sit in the contemporary world? If there is compatibility between *TJ* and the Military Covenant, how does this fit, given the

theological origins of the meaning of covenant, with Rawls' rejection of religious notions as unreasonable? The situation, from a Rawlsian perspective, appears troubling. The essentially religious concept of covenant sits in an arrangement, the Military Covenant, which is entirely consistent with a common interest. Can the Military Covenant, with its central idea of a binding unconditional relationship that originates in Christian theology, continue to be acceptable to Rawls?

## **Chapter Six**

### **The Moral Theory of John Rawls in *A Theory of Justice***

In the closing remarks of the last chapter, the first of the two questions that help frame this thesis was re-introduced. This concerns the meaning of the Military Covenant and how it sits in relation to the work of John Rawls in his seminal *TJ*. It is this that will be discussed in this chapter. Previously it was shown that after applying Rawls' conception of justice as set out in *TJ*, the Military Covenant is entirely consistent with it. There is a common interest in security shared by all reasonable people in a state. In order for the military to fulfil its task, it is just that adequate resources are provided. A key aspect of this resourcing is the development and maintenance of the moral component. In the UK context, the Military Covenant is a critical part of this. Although it results in the allocation of additional resources to the army and military personnel, this is perfectly legitimate. Only if the military was being used, or was performing, in an unjust manner, would organised opposition be morally right.

This conclusion leads to a difficulty for *TJ*. Rawls is unequivocal in rejecting the role of Christianity in making a reasonable contribution to public discourse; it can have no normative value in public discourse. However, the Military Covenant, with its conscious use of the language of sacrifice and unending commitment, rests upon fundamental Christian theological concepts. Therefore, the reasonableness of the Military Covenant presents *TJ* with a significant problem; more specifically, the Military Covenant reveals a basic limitation in Rawls' approach because it fails to take account of the importance of Christianity and, more broadly, other traditions and influences that are at work in a society, and which fall outside Rawls' test of reasonableness.

Much of this consideration of Rawls' position is based on the material that was introduced in previous chapters. In order to demonstrate the accuracy of the judgements that have been made, further consideration is helpful to show how Rawls' rejection of the religious perspective is central to *TJ* and is woven into the fabric of his conception. This entails considering the moral theory or, as Freeman terms it, the "moral psychology" (Freeman 2007:11) of human beings that underlies



Rawls' conception of social justice. This is seen very early on in *TJ*. In the opening chapter, where he sets out the original position, Rawls makes some important comments that show the essential decency with which he regards people. In his view human beings have an "intuitive conviction of the primacy of justice" (Rawls 1971:4). This is a striking comment, and is connected to the discussion of Rawls' influences which occurred in Chapter Three, where it was suggested that Rawls places himself nearer to Locke than to Hobbes in his view of human nature. This view is deepened by declaring that it is based upon what he sees as the "first virtues of human activities, truth and justice" which are "uncompromising" (Rawls 1971:4). Thus human beings are driven by their natural desire for justice which he sets out to establish by showing it can be "interpreted and assessed" (Rawls 1971:4).

This need to produce a scheme that meets this aim rather than rest on an intuitive means for measuring justice, hints at the problem that is implicit in this part of Rawls' discussion and which he seeks to resolve. If people have a powerful instinct for justice, why is it so difficult for them to find agreement in the specific content or meaning of social justice? If human beings are driven by a desire for there to be justice, why is there so much apparent disorder in society? According to Rawls this can be accounted for by a conflict between two drivers of human activity. Positively, people recognise that by *co-operation* mutual benefits arise. However, on the other hand, individuals are driven to seek as great a benefit as possible at the expense of others; ironically an echo of Hobbes' felicity. While Hobbes resolves this in the person or institution of Leviathan, Rawls argues that social justice is about achieving an equitable resolution of this tendency so that the goods to which co-operation leads are not lost.

The means that Rawls offers to achieve this is also the precise point at which he implicitly removes religion from having a role in public life. Rawls considers the grounds upon which society is well-ordered, or socially just. This is when...

... it is a society in which (1) everyone accepts and knows that the others accept the same principles of justice, and (2) the basic social institutions generally satisfy and are generally known to satisfy these principles. (Rawls 1971:4)

These two conditions provide for a society in which there is a universal concept of justice. It is one that is essentially *rational* in that what is held as just is open for all to consider and examine. This is crucial for appreciating the conception of justice that is produced and honed in *TJ*. For a state to be just in how it deals with matters of public fairness, the process must be open and visible, and the only principles used to arrive at a settlement should be those that are shared by all. Whilst this is expressed very positively, and indeed has a beguiling attractiveness, it removes from public debate any views that may originate from elsewhere in human experience other than those of which Rawls approves. It therefore follows that religiously inspired positions on social justice or wider matters of ethical concern, such as medical ethics, are disallowed, as they rest ultimately on what Rawls would characterise as some special knowledge or insight known only to those who share the same faith perspective. For Rawls, the principles upon which a fair society is based are...

the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association. (Rawls 1971:10)

This is illustrated by the example of the conscientious refuser, or pacifist, who will not sanction military action which was discussed in the previous chapter. Rawls, it was noted, makes a fundamental distinction between a refuser and someone who is moved to engage in civil disobedience. Rawls understands civil disobedience to be a political activity that emerges as a response to particular circumstances. Clearly the spectre of Rawls' opposition to the Vietnam War is evident here. In comparison, pacifism is the absolute renunciation of the moral legitimacy of military action under any circumstances. The basis upon which such a position is reached is set out by him when he writes:

Conscientious refusal is not necessarily based on political principles; it may be founded on religious or other principles at variance with the constitutional order. Civil disobedience is an appeal to a commonly shared conception of justice, whereas conscientious refusal may have other grounds. (Rawls 1971:324)

This is a statement that illustrates the heart of Rawls' problem with religion, and indeed secular world views such as Marxism. For him they are at odds with his understanding of reason.

In Chapter Three there are several comments that show that in *TJ*, reason and rationality are very important marks of what it means to be human. For Rawls it is the ability that people possess to be rational, that enables them to understand what is good, and pursue it (Freeman 2007:480). Similarly, it is reasonableness that leads to the sense of justice (Freeman 2007:481). These terms, which are referred to as the “two moral powers” in Rawlsian theory (see Freeman 2007:54), are so fundamental in *TJ* that they may be regarded as playing an epistemological role. This is supported by Freeman’s comment that Rawls sees these as purely natural characteristics that do not derive from utilitarian experience (Freeman 2007:286). These innate qualities therefore may be regarded as the foundation for Rawls’ work in *TJ*, and it is as a result of them that the ability to appreciate justice as fairness is based. Freeman comments:

For the implicit suggestion in *A Theory of Justice* is that *both* rational and moral autonomy - the full development and exercise and engagement of the two moral powers – are intrinsic goods, necessary to fully realizing our nature as free rational moral agents. (Freeman 2007:290)

As these are intrinsic goods of human existence under normal circumstances, it follows that they are qualities that are also universal. Regardless of considerations like gender and culture, every human being is endowed with rationality and reasonableness (justice). There exists a commonly understood notion of what is fair and appropriate. Religion stands in contrast to this. The claim that someone’s dignity is grounded in the “fact” they are created in God’s image and likeness is based wholly on the acceptance of God’s existence and the authority of the Christian faith. Clearly such a proposition is contentious and, following Rawls’ understanding of the moral powers, it is therefore not reasonable. Thus the claim of the pacifist, who rejects state violence under any circumstances, does so not from a position that is amenable to discussion and moderation. It is an absolute position buttressed by a religious conviction in many cases, and outside what Rawls understands to be reasonable and rational. Rawls pursues this matter to show how conduct that relies upon religion for its justification is actually immoral and an example of how religion can deny to all an equal share of justice.

The aim of a well-ordered society, or one in a state of near justice, is to preserve and strengthen the institutions of justice. If a religion is denied its full expression, it is presumably because it is in violation of the equal liberties of others. In general, the degree of tolerance accorded to

opposing moral conceptions depends upon the extent to which they can be allowed an equal place within a just system of liberty. (Rawls 1971:325).

The process by which Rawls achieves his rational and reasonable scheme is set in section 25 of *TJ* where he describes the reason why the original position leads to the conception of justice that it does. An implication of the moral power of rationality, discussed above, is that human beings in the original position will pursue the rational decision to maximise primary social goods (Rawls 1971:123).

They know that in general they must try to protect their liberties, widen their opportunities, and enlarge their means for promoting their aims whatever these are. Guided by the theory of the good and the general facts of moral psychology, their deliberations are no longer guesswork. (Rawls 1971:123)

Freeman explains this leads to what is called the “thin theory of the good” (Freeman 2007:265). This is the simple notion that people in the original position will pursue rational desires. Freeman offers a refinement of this rather general notion.

Staying in good health, learning a language, developing one’s skills and educating one’s capacities are rational for anyone since, among other reasons, they are either necessary to forming and pursuing a plan of life, or they make one’s life more interesting and seem more worthwhile. (Freeman 2007:265)

Although this may seem to be a rather broad and, indeed, sophisticated set of characteristics, it should be remembered that no one participating in the original position has any notion of whether they apply to them individually; they are abstractions of general benefit. This is a crucial feature that requires consideration. As these qualities are not necessarily something that each individual in the original position will experience, they must be regarded as a corporate experience. In confirmation Rawls writes “The parties are presumed to be capable of a sense of justice and this fact is public knowledge among them.” (Rawls 1971:125). This opens Rawls to a criticism.

If justice in the original position is public and rational, then some reflective cognisance by the parties involved must also be anticipated. The concept of the thin good is therefore one that has been processed through public mediation. This, it follows, results in a situation where the conception of what is publicly good is what is commonly found to be good. Goodness is therefore in danger of being defined by its

utility. While this is not unimportant, because surely what is good should lead to human thriving, it is not the only criterion that makes a quality or behaviour a good one. What is good should also be noble. The virtue of truthfulness does not fit comfortably with a public process for deciding whether it should be included in the life of society. Its inclusion rests upon more fundamental reasoning than that found in Rawls' view of what is good. However wide and open those in the original position are to maximising virtues that make for a just society, there is a sense that the mature conception of justice as fairness which emerges is one that is manipulated from some undisclosed perception of what is desirable. In this interpretation the original position rests upon a partial use of the term 'rational'. Thus, although justice as fairness is undisputedly attractive, the fact is that it emerges out of an original position that is construed in such a way as to make its emergence not contingent on the argument that it is rational in some pure conceptual sense, but as a result of discrete forces that make its emergence inevitable. Rawls, so it is suggested, has a conception of society in mind, which looks remarkably like late twentieth century America, and then fashions an epistemology to produce it.

It therefore follows that Rawls' views are open to the same accusation he places against the systems of thought of which he is dismissive. He faces the same charges of irrationality and unreasonableness that he places against Christian and other views. His conception is irrational because it is based on a particular view of humanity that reflects a particular cultural heritage and which is not, therefore, universal in the way Rawls asserts. Further, it is unreasonable because, given the epistemological status that Rawls ascribes to *TJ*, it is not ultimately something that is open to discussion. As a whole, Rawls' approach has the feel that his reasoning produces a given based upon a view of human capacities and one that has less historical and psychological penetration than Christianity, which, it can be suggested, is more adequate in reflecting human nature in its entirety than the optimism that characterises Rawls' view.

This discussion of Rawls' moral theory or psychology is important as it reveals a difficulty with *TJ* that Rawls himself came to acknowledge in *PL*. The meaning and place of rationality and reasonableness are simply too narrow. The Military Covenant

illustrates this remarkably well by giving a practical demonstration that what Rawls regards as reasonable does not reflect the complexity of influences that makes up a settled, if still maturing, national culture. The Military Covenant, it has been shown, is an established and significant aspect of contemporary public discourse. Similarly it has been shown that its meaning is derived from Christian theology. To argue a contrary view is unconvincing, although the extent to which this background is appreciated is probably not widespread. Paradoxically however, this strikes at the conception of public good that *TJ* seeks to establish. In a society so complex as that of the UK, the influences on its culture, understood in a comprehensive sense embracing fields as diverse as politics through to the artistic and indeed any other, rests upon a background that is beyond any, what appears to be in comparison, limited notion of what is reasonable and rational. Harries, while commenting upon the origins of modern political institutions and, in passing, considering the Enlightenment as a source, makes a comment that captures this view.

Furthermore, although it is widely held that the leading political notions of our times nearly all derive from European thinkers from the seventeenth to the nineteenth centuries, usually termed 'the Enlightenment', I will argue that these notions are in fact deeply imbedded in a Christian understanding of what it is to be a human being in society. (Harries 2010:4)

He continues

... the Enlightenment itself arose in and out of Christian soil, drawing on certain fundamental principles within it. (Harries 2010:4)

The conclusion that Rawls' analysis falls short is based on *TJ* alongside an exploration of the Military Covenant. While ultimately *TJ* is not able to accommodate the theological foundations of the Military Covenant, it is comfortable with the Military Covenant as a statement of the relationship between society and the armed forces. In particular *TJ* does not have a difficulty with the sense of entitlement that the Military Covenant creates in favour of the armed services and their personnel.

The weaknesses of *TJ* that have been identified in the preceding discussion are threefold. Firstly, the original position is not the nursery condition for universal human goods that Rawls believes it is. There is a contrivance to the original position that is biased in terms of its outcome; the qualities it promotes are culturally specific to the Western liberal societies of the latter decades of the twentieth century. Secondly,

Rawls' understanding of what is reasonable and rational is flawed by being too exclusive. In themselves the two moral powers are attractive. However, although there is an inner consistency to Rawls' view that what is reasonable is something that each and every rational individual can subscribe to, it is manifestly too limited a view. What emerges, from considering the Military Covenant, is that there are wholesome and effective sources of goods that lie beyond the narrow criteria that Rawls proposes. Thirdly, Rawls' insights concerning human nature are open to criticism. This concern is to do with one feature of Rawls' estimation of human nature. This is the question of what makes for human fulfilment; what are the ends that make people good? More acutely, what drives people to want to live well, even if it is rational that they should do so? Once again Rawls' generally positive regard for humankind can be seen; criticism therefore often feels churlish. Despite such sensitivity, however, the problem is that his understanding of human nature is partial.

The thin theory, it was explained above, is a sort of minimal statement of what makes for good. However, what do mature reasonable people do with their lives to maximise their incipient moral awareness of the original position? Once the two principles of justice and the other aspects of justice as fairness have been put in place, what rational plan should someone have for his life? As Rawls puts it:

The definition of the good is purely formal. It simply states that a person's good is determined by the rational plan of life that he would choose with deliberative rationality from the maximal class of plans. Although the notion of deliberative rationality and the principles of rational choice rely upon concepts of considerable complexity, we cannot derive from the definition of rational plans alone what sort of ends these plans are likely to encourage. (Rawls 1971:372)

This suggests that the experience of life could be one of frustration. However, Rawls rejects this, and introduces a psychological pattern of behaviour called the "Aristotelian Principle". It is this that drives people to put into action those things that enable them to live rationally and well.

... other things equal, human beings enjoy the exercise of their realized capacities (their innate or trained abilities), and this enjoyment increases the more the capacity is realized, or the greater its complexity. The intuitive idea here is that human beings take more pleasure in doing something as they become more proficient at it, and of the two activities they do equally well, they prefer the one calling on a larger repertoire of more intricate and subtle discriminations. (Rawls 1971:374)

For Rawls the Aristotelian Principle is a powerful descriptor of human behaviour; he speaks of it as a “fact”.

The role of the Aristotelian Principle in the theory of the good is that it states a deep psychological fact which, in conjunction with other general facts and the conception of a rational plan, accounts for our considered judgements of value. (Rawls 1971:379)

Freeman, on the whole a friend of Rawls, on this occasion concedes that this is a “substantial claim” about human nature (Freeman 2007:269). He notes the broad use of the principle to describe behaviour. At best the Aristotelian Principle should be seen as “useful in explaining the more general aims and activities” in life (Freeman 2007:270). It would be a mistake, is the implication, to push this too far in suggesting it is how individuals act. Too many happenings occur that lead people to seek other avenues in life than the maximisation of excellence. Indeed, it is hardly feasible that any one person is able to lead a life that is reflective of the Aristotelian Principle in a perfectionist sense. In many instances, some individuals lead what they believe are perfectly satisfactory lives that do not conform to any particular attainment of excellence, or they may pursue ‘excellence’ in a socially, morally, or aesthetically useless activity. Rawls himself concedes this when he fastens on the example of someone who has an exceptional, but bizarre, pattern of behaviour. Such an individual, who may have an unusual idea of excellence due to trauma or disability, nonetheless continues to fit the Aristotelian Principle (Rawls 1971:380). The extent therefore to which the Aristotelian Principle can be said to fit the reasonable and rational character of human nature that Rawls contends, is open to question. If behaviour that is clearly irrational even if, as in the case of disability, it is explicable, is consistent with the Aristotelian Principle then its ability to act as a description of what makes for human good is compromised. Further discussion of this follows in later chapters.

This prepares the way for a more fundamental challenge to Rawls’ view of human nature. In earlier chapters it was shown that the conception of justice in *TJ* fits together in an inter-connected manner. From the over-arching vision of the justice that should characterise society, a statement of human nature that makes this goal achievable is provided. However, the extent to which Rawls has an accurate notion of human nature is questionable. This is illustrated by further consideration of the



original position. In particular, the optimism of the benign character of human psychology and motivation is not something that is necessarily apparent.

Within the original position, a process operates that rests upon Rawls' optimistic view of humankind which he called "reflective equilibrium". According to this, there are agreed positions about values and standards which are commonly held in society by the sort of reasonable people discussed earlier. Religious and racial intolerance are cited examples of unacceptable conduct in society (Rawls 1971:17). Not all decisions are clear, however. Careful consideration, and adjustment, of what is the best position to hold, will need to be made. Guided by the moral aspects of their nature, people engage in a sort of discussion so that an agreed outcome emerges.

By going back and forth, sometimes altering the conditions of the contractual circumstances, at others withdrawing our judgements and conforming them to principle, I assume that eventually we shall find a description of the initial situation that both expresses reasonable conditions and yields principles which match our considered judgements duly pruned and adjusted. This state of affairs I refer to as reflective equilibrium. (Rawls 1971:18)

For Rawls this provides another of the justifications for his scheme; an agreed basis upon which he can build. Freeman comments:

In general, the idea of justification is an epistemological concept, connected with our knowledge of some domain (of empirical facts, mathematical theorems, moral principles, etc), how we come to know or at least can claim to know what we do, and our reasons for our beliefs and judgements regarding what is true. (Freeman 2007:29)

Some will object to this aspect of Rawls and be generally dismissive of the implication that authority in ethics and public philosophy is possible. Whilst scientific and related disciplines may be amenable to empirical justification, the same is not possible in matters of moral or ethical theory (Freeman 2007:29). Rawls however does not quite make the same claim for reflective equilibrium. It is essentially a process that shows what is considered reasonable at a particular time and context rather than a statement of universal truths. Reflective equilibrium allows adjustments to be made in what is morally acceptable: morality is therefore relative.

Whilst this understanding of morality is itself notable, of greater interest is the standing of reflective equilibrium. As shown earlier, it is based upon the two moral

powers of rationality and reasonableness. However, these aspects of Rawls' moral psychology can be challenged. Earlier, the extent to which *TJ* is truly based upon rationality and reasonableness was questioned. It was argued that Rawls is actually partial in how he applies these concepts and uses them to exclude other sources of understanding, notably religiously based ones, from public discourse. More radically, it can be argued that his insights concerning human nature are deeply flawed. As a result, the claims made for reflective equilibrium dissolve.

In contrast to Rawls' reliance on the moral powers are a number of alternative views. One comes from the perspective of existentialism, a philosophical approach that parallels the influence of liberalism following World War Two. The thinker who is most commonly associated with its emergence is Kierkegaard (1813-1855). In his *The sickness unto death* (Kierkegaard 1954), he suggested that humankind is distinguished from other life forms by the experience of consciousness or, to use his own term, existence. A consequence of this is that people have to express themselves; Man must *will himself* (Hatton 1971:303). This is not easily undertaken: when faced with the complexities of the world, many prefer to work out the value of their life by connecting their self-awareness to matters external to their inner life. Kierkegaard characterises such a life as being in despair because such an individual, although he may well experience happiness, is beholden wholly to something over which he has no control (Kierkegaard 1954:147). Alongside this, however, there is another urge within human beings: the need to experience what he called the eternal (Kierkegaard 1954:194). Each individual needs to take hold of his life and take full responsibility for it. Instead of relying on external matters, an individual must respond personally to this internal experience (Kierkegaard 1954:201). This will not bring calm, however. It is an experience that confronts someone with a sense of nothingness or dread. Only once this has been encountered, experienced and, crucially, accepted, can someone become an authentic person (Kierkegaard 1954:213). The achievement of this state, however, is not the end. This accepting of one's position is an admission of responsibility for self and that, according to Kierkegaard, leads to knowing guilt.

In no respect is a man so different from God as in the fact he is a sinner, as every man is, and a sinner 'before God'. (Kierkegaard 1954:252)

It is at this stage that a comparison between Kierkegaard and Rawls is productive. Whilst for the latter the human condition is naturally one of goodness due to the essentials of reasonableness and rationality; for the former it is one in which moral weakness features. Kierkegaard does offer a means of overcoming this. Although human beings are inherently flawed, their fault lies in what a person does with that insight.

... when he talks of men having freedom, of being able to choose, of men's being able to accept themselves, he means something quite different (to simple moral failure). Men have no freedom to do this or that, but they do have freedom to realise themselves; they can will themselves, or they can refuse to will themselves. Man's freedom and this possibility of choice are thus something much deeper than the meaning usually ascribed to these words. (Hatton 1971:305 comment in bracket added)

Ultimately, whilst acceptance of self was the way to authentic life, Kierkegaard was also led to Christianity as the means by which human guilt could be overcome.

The difference between Rawls and Kierkegaard is very wide. While Rawls is concerned with justice, Kierkegaard's interest is in the question of the ground of being and truthful living. However, this should not stop the soundness of Rawls' anthropology being challenged by Kierkegaard. There is a depth to the Scandinavian's approach that resonates in providing a more adequate overall statement of the human condition. This is illustrated in *TJ* where Rawls considers the experience of envy, along with other feelings like shame and humiliation.

Certainly men are afflicted with these feelings. How can a conception of justice ignore this fact? I shall meet this problem by dividing the argument for the principles of justice into two parts. In the first part, the principles are derived on the supposition that envy does not exist; while in the second, we consider whether the conception arrived at is feasible in view of the circumstances of human life. (Rawls 1971:124)

While Rawls does not abolish envy and related experiences, he does see them as irrational and "disruptive" (Rawls 1971:125) in that they diminish the desire for justice. Such a comment suggests that human nature needs to conform to Rawls' conception, rather than the other way around. There is a tendency in Rawls' approach to manoeuvre the complexities in his argument by repeatedly introducing divisions in order to refine his case.

There is one characteristic that Rawls and Kierkegaard share. Both are ultimately positive about human capacities. For Rawls, humankind is able to act justly because it is an aspect of its nature, whilst for Kierkegaard there is the genuine possibility of, through self-knowledge, genuine living. In contrast stands the view of human nature associated with Hobbes, whose presence as an alternative to Locke, in whose tradition Rawls places himself, has been referred to earlier.

Kirwan (2008) discusses the twentieth century German political theologian Carl Schmitt as someone who belongs to the Hobbesian tradition. He discusses Schmitt's *The Concept of the Political* (1927) in which he makes a distinction between 'Freund – Feind' ('Friend or Foe') which Kirwan describes as "an extension of the concept of the state set out in *Leviathan*." (Kirwan 2008:27). Schmitt presents God's plan for the world as division; attempts to deny the differences between peoples and nations are mistaken (Kirwan 2008:27). This principle, and historical experience, of division, when joined to the doctrine of original sin, allows Kirwan to show how Schmitt's complete rejection of "undifferentiated optimism of a universal conception of man" arises. To strengthen this, Kirwan goes on to discuss Schmitt's comments on the relationship between law (nomos) and space and territory. Schmitt argued for a strong connection between religion and the territory held by a state, an arrangement that is reminiscent of Schmitt's association with National Socialism (see Kirwan 2008:27,30&32), and which makes extra-territorial entities, such as the UN, illegitimate, along with universal concepts such as human rights. Schmitt emerges as a thinker whose views are clearly in favour of a strong state as a bulwark against a threatening world. In this his connection with Hobbes is apparent.

The view of the state that is found in Schmitt is very different from that found in Rawls. For Schmitt it is a balance against domination by others who, tainted by sin, are bent on expansion of their own authority. In contrast, Rawls sees the liberty of the individual as the good that the state should be organised to achieve. What Schmitt illustrates, together with Kierkegaard, is that there are alternatives to Rawls which are based upon entirely different views of the moral psychology of humanity. From time to time the attractiveness of Rawls' views has been commented upon. Despite this, and upon reflection, it should not deflect from the work of the likes of

Kierkegaard, who shares Rawls' optimism in human possibility, as well as a thinker like Schmitt whose ideas are profoundly pessimistic in comparison. Against these the approach of John Rawls is, candidly, rather shallow and optimistic.

## Chapter Seven Christianity and Rawls

In the previous chapter the role of Christianity, and religion in general, is absent from the discussion except for some observations when specific criticisms of *TJ* are being made. This is unsurprising as the 'atmosphere' of *TJ* is undoubtedly secular. This is reflected in the index to *TJ* which contains no reference to either religion, Christianity or God. However, although an absence of religious references may be taken as an indicator that it does not play any role in *TJ*, it would be a simplistic approach to rely on it to reach a clear conclusion. As has been argued earlier when discussing the Military Covenant, it is very important to understand the background ideas that influence and shape what is presented on the surface.

Rawls himself appears to have been sensitive to the accusation that he was opposed in a fundamental sense to Christianity. According to Bretherton:

John Rawls explicitly distances himself from what he calls anti-Christian 'Enlightenment Liberalism' and advocates a political form of toleration and autonomy that is not *necessarily* committed to a conception of the individual agent as a sceptical self-reflective subject. (Biggar and Hogan 2009:86)

In the same volume as Bretherton, Biggar contributes an essay, *Not Translation, but Conversation: Theology in Public Debate*, which is referred to in Chapter Four. He argues that the approach Rawls outlines in his mature work is not dismissive of religion, unlike his earlier work (see Biggar and Hogan 2009:174ff). However this argument only works if a formal and deep distinction between Rawls' earlier work and his later work is allowed. Biggar clearly holds that such a distinction is possible (see Biggar and Hogan 2009:176). This view can, however, be resisted. While in *PL* Rawls did move away from the view of 'justice as fairness' as a comprehensive doctrine, there is evidence that Rawls did not fundamentally change in his disavowal of Christianity.

This suggestion is given purchase in respect of Rawls by the publication in 2009 of *A Brief Inquiry into the Meaning of Sin and Faith with "On My Religion"* which were each written by him. The contents of this publication bracket the years of Rawls' intellectual output. *A Brief Inquiry (ABI)* is a thesis written by Rawls when he was an

undergraduate at Princeton University during 1941 and 1942. At that time Rawls was a committed Episcopalian and it seems he contemplated ordination (Nagel 2009:1). In contrast, *On My Religion (OMR)* belongs late in his career, about the time that Rawls published in 1999 *The Law of the Peoples* which is regarded as his last significant book. *OMR* was never produced by Rawls for publication. According to Cohen and Nagel, who provide one of two commentaries in *ABI*, it was written “perhaps for the interest of family and friends” (Nagel 2009:1). In contrast to the Christian commitment of *ABI*, this later work reveals a person who had clearly disavowed orthodox belief although, according to Cohen and Nagel, he retained some broader, less defined religious sensitivity.

In *OMR* Rawls explains that his position as a committed Christian shifted as a result of his wartime experiences. He describes three episodes which made an impact upon him; an unfortunate meeting with an army chaplain, the death of an inspirational colleague, and what he learnt about the Holocaust.

These incidents, and especially the third as it became widely known, affected me in the same way. This took the form of questioning whether prayer was possible. How could I pray and ask God to help me, or my family, or my country, or any other cherished thing I cared about, when God would not save millions of Jews from Hitler. When Lincoln interprets the Civil War as God’s punishment for the sin of slavery, deserved equally by North and South, God is seen as acting justly. But the Holocaust can’t be interpreted in that way, and all attempts to do so that I have read of are hideous and evil (Nagel 2009: 263)

Rawls’ faith was sufficiently undermined that when he returned to Princeton in 1946 his interest in theology had dissipated and he instead followed studies in philosophy. Rawls comments that his rejection of Christianity continued for several years and he came to regard many Christian beliefs as morally repugnant (Nagel 2009:263). *OMR* clearly shows Rawls to have abandoned his earlier Christian commitment. He wrote, “To the extent that Christianity is taken seriously, I came to think it could have deleterious effects on one’s character.” (Nagel 2009: 265)

Given Rawls’ clear disavowal of Christianity, can he be regarded as an atheist? In *OMR* Rawls refers to Jean Bodin (1530 – 1596) and his *Colloquium of the Seven about Secrets of the Sublime*. He draws attention to Bodin’s rejection of atheism on the grounds that to reject God is to reject justice. In Rawls’ view, that connection

reflected the boundaries of what seemed reasonable during the sixteenth century. In contrast, Rawls argues that in the modern era it is no longer considered necessary to hold that there must be a connection between God's existence and justice. However, rather than formally announce that he is an atheist, Rawls attempts an accommodation between human conceptions of justice and those of the divine by suggesting that they may be indistinguishable in practice.

We need to consider how the relation between God's reason and moral and political views may be conceived. Perhaps we can say this: God's reason and our reason are in some ways similar and in some ways different. God's reason is different in that its powers far surpass ours: it comprehends all possible information and it can see all possible inferences; for example, it grasps at once all the relations between the facts about numbers. God knows straightaway that Fermat's theorem is true and need not labor to work out new mathematics as we do in order to establish it. Yet God's reason, I believe is the same as ours in that it recognizes the same inferences as valid and the same facts as true as we recognize as valid and true. Beyond that we may suppose that God's reason is consistent with ours: so far as we can comprehend a case, God's idea of reasonableness and ours yield the same judgement. (Nagel 2009: 267 – 8)

However attractive such an accommodation may appear, there is a clear implication from this: faith in God adds nothing to our ethical understanding. This leads to the inescapable conclusion that although he was unwilling to make a formal statement of atheism, Rawls must be regarded as a practical atheist or, more positively, a secular humanist. Nagel and Cohen are resistant to this conclusion. While they seem to concede no more than that Rawls' beliefs may be unclear, they argue that he had a disposition towards belief. In their view Rawls had a ...

...deeply religious temperament that informed his life and writings, whatever may have been his beliefs. He says, for example, that political philosophy aims at a defense of reasonable faith, in particular reasonable faith in the possibility of a just constitutional democracy; he says that the recognition of this possibility shapes our attitude "towards the world as a whole"; he suggests that if a reasonably just society is not possible, one might appropriately wonder whether "it is worthwhile for human beings to live on earth" and he concludes *A Theory of Justice* with powerfully moving remarks about our place in it *sub specie aeternitatis*. These and kindred reflections express an aspiration to a comprehensive outlook on the world, which is an element of what we mean by a religious temperament. (Nagel 2009: 5)

However, it is questionable whether this can reasonably be said of Rawls. To describe someone even as temperamentally religious in spite of clear evidence that



they disavowed the religion associated with their culture and with no evidence of any attachment to another, is a somewhat specious statement. The passage just set out reflects the position of Rawls that he expresses in *PL*, and the conclusion of *TJ* may well be judged as an elegant piece of *humanistic* writing, which has its own integrity, without being cited as evidence of a “religious temperament”.

While the evidence therefore shows that Rawls abandoned the Christian faith of his disrupted university education, it would be a mistake to follow this by concluding that ideas and concepts that he used and developed do not owe anything to Christianity or that Christians may not offer insights about his theory. It would also be a mistake to ignore evidence of *continuity of concerns* between the time when Rawls can be regarded as a Christian, and his mature career.

An example of this is provided by the importance that Rawls attaches to community and personality in *ABI*. His interest in them (Nagel 2009:108) is arguably a precursor to his first principle of justice of *TJ* (1971:53). In *ABI* Rawls identifies community and personality as two of four terms through which he develops his argument. He does this in relation to what he calls four ‘presuppositions’ (Nagel 2009:112). Although an undergraduate, Rawls does not shy away from developing his own technical definitions, as this illustrates. As a result there is some imprecision in fully understanding his thinking (for an illustration see Nagel 2009:35-37). Despite this, the following passage does give an indication of how he sees community and personality and how they relate to one another.

The above four presuppositions form the categories of all our thought. We are to discuss our problems in terms of God, personality, community, and nature. As we proceed we shall see how certain other philosophers and theologians employ different concepts, and that therefore we cannot accept their analysis. Further, a simple development of the above presuppositions will yield our conception of the universe, i.e., that the universe in its spiritual aspect is a community of persons manifesting the glory of God and being related to Him. God created the world, as far as we can tell, for the establishing of such a community, and the end towards which creation moves is just such a community. Man, being a person, belongs to this community, and it is membership in this community which is the distinctive thing about man and which sets him apart from the creatures of nature. By being a person, man lives in relationship with God, the angels, with the devils and his fellow men, and he cannot destroy this relationship or this attachment to community. Thus the universe is at root a

spiritual or personal one. It was created by God, who is as He has revealed Himself, and among the creation are created persons. The world in its essence, is a community, a community of creator and created, and has as its source, God. (Nagel 2009:112)

Whilst Man and the universe owe their existence to God, Man fulfils the purpose of his creation by having conscious self-awareness. It is this that gives him personality and which distinguishes him from the state of unawareness that characterises the rest of creation. So in *ABI* human individuality is of first order importance. However, the individual's awareness is not sufficient in reaching what God intends. This is only reached by person-in-community.

First of all, what is man? We believe that man is a communal being and thereby possesses personality. The distinctive thing about man is not his reason, not his appreciation of beauty, nor his various powers; no, man's distinctiveness from other worldly creatures is that he was made for community and that he is a personality necessarily related to community. Man's likeness to God consists in this ability to enter into community, since God himself is community being the Triune God. (Nagel 2009:121)

While the main thrust of *TJ* is the creation of a just society this implicitly assumes that it is also the setting in which people can thrive. Without this positive view, it is inconceivable that *TJ* could have been written. *TJ* shares with *ABI* a concern for the establishment of the arrangements under which human beings can thrive. While *TJ* explores this through social philosophy, *ABI* explores how this same goal can be reached by theology. *TJ* looks to the implementation of justice as fairness as the principle upon which the just society can be based. In *ABI* the good community is reached when people, who are by nature communal creatures, enter a relationship with their Creator. This suggests therefore that a line of continuity exists between Rawls the young man and the mature philosopher, around the issue of how humanity in society can thrive. At the same time there is an important difference in how Rawls moves towards this goal. *ABI* identifies the sin of egotism, discussed below, as something that *destroys* community; people are designed for a relationship with God which their sin damages. In comparison, *TJ* shows how society can be reformed to create a *positive* outcome (Nagel 2009:15). Given that human beings find themselves in society, the issue that confronts human beings is how they organise this 'givenness' so they can thrive. This difference between *ABI* and *TJ* can be accounted for not so much by Rawls' renunciation of Christianity, but by the observation that by the time he wrote *TJ* he had acquired the insight and technical

ability to develop and express his ideas progressively. Nevertheless, both *ABI* and *TJ* share the paradox that the flourishing of morally autonomous individuals is achieved inside community. Evidence of a level of continuity between the young and mature Rawls can therefore be traced.

A second, and more specific, example of an overlap of concerns has also been found. Cohen and Nagel identified that in both *ABI* and *TJ*, Rawls disapproves of any reward based upon merit. For them this is “a particularly striking continuity between the thesis and Rawls’s later views” (Nagel 2009:18). However, it can be argued that this is less clear than they suggest. Whilst disapproval of merit is a feature in both works, the concepts upon which this disapproval is based, serve better to illustrate further the deep shift in Rawls’ attitude to Christianity rather than any continuity in his thinking.

Adams, who wrote an introduction to *ABI* (Nagel 2009), argues that as a Christian the dismissal of merit in his thesis reflected the attachment Rawls had to the experience of conversion. He cites Rawls’ own words as evidence.

It is undoubtedly true that a full understanding of conversion is absolutely essential for the understanding of Christianity ...conversion is crucial because its character constitutes the womb of Christian theology. (Nagel 2009:83)

One of the doctrines that emerges from this ‘womb’ is that of the grace of God. Conversion leads to a vision of God whose love leaves no place for merit which, Rawls argued, is a manifestation of egotism (Nagel 2009:86). As that is a flaw in character, it is something that God does not possess. Therefore, if someone is a sincere believer, they too will disavow anything to do with merit (Nagel 2009:88). Such reasoning will have been jettisoned by Rawls as a result of the rejection of his Christian faith. By the time that Rawls wrote *TJ*, while he continued to see merit as having no place in human well-being, any theological reasoning had gone. Adams writes ...

In *TJ*, to be sure, the argument against desert is not presented in theological terms, but in terms of a natural lottery, the idea of being fortunate or favored by nature. Rawls certainly had reason enough in his conception of the nature and aims of political theory to avoid arguing in theological terms in his theory of justice. But he may also have been

motivated by a personal unwillingness to “interpret history as expressing God’s will,” as he put it decades later in “On My Religion”. (Nagel 2009:89)

What therefore emerges is that both as a young man and as a mature writer, Rawls was highly sceptical of the value of merit. This is something to which Nozick gives much attention as seen earlier. However, what is truly striking is that the ground of his objection to merit shifted so markedly from a fundamental theological doctrine of God’s grace to being purely a matter of chance. It would seem that Rawls’ rejection of merit is a matter of temperament rather than a matter of straight forward consistent intellectual decisiveness.

The above discussion indicates that ‘person–in–community’ is a theme with a line of continuity between *ABI* and *TJ*. The finding of any further connection, however, is a matter of careful discrimination. While Rawls’ attitude to merit in both works is equally disparaging, the reasons for this are very different; his rejection of merit cannot be seen as having the same consistency as that of the balance between the individual and society. In addition to these two examples, there is also a third area that needs careful examination. This concerns whether the veil of ignorance of *TJ* can be traced to his earlier work. A key characteristic of persons who are in the veil of ignorance is that they have total loss of self awareness of condition and standing when outside the original position. Rawls expresses this:

It is assumed, then, that the parties do not know certain kinds of particular facts. First of all, no one knows his place in society, his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities, his abilities, his intelligence and strength, and the like. Nor, again, does anyone know his conception of the good, the particulars of his rational plan of life, or even the special features of his psychology such as his aversion to risk or liability to optimism or pessimism. (Rawls 1971:118)

This loss of awareness, it may be argued, is a further manifestation of Rawls’ distaste of egotism. The point being pursued here is an additional one.

While the purpose of the veil of ignorance is to bring about a society based upon justice as fairness by putting inequalities aside, the same approach of renunciation is also recognisable in *ABI* when Rawls is commenting upon the human condition and how persons can move towards God. A key influence on Rawls in *ABI* is a book by a

now forgotten British philosopher, Philip Leon, entitled *The Ethics of Power*, published in 1935 (Nagel 2009:25). From Leon, Rawls took the notion that human beings possess appetites that are drivers of attitudes and behaviour (Nagel 2009:37). As they play such a key role they are “an indispensable basis” (Nagel 2009:40) for moral life. However, Adams comments, in seeking to meet these appetites, people are led to behave in ways that develop into egotism.

‘Egotism’ is used here in a rather broad sense. It does not just signify conceit, or an excessively high opinion of oneself. For both Rawls and Leon, I would say it signifies all sorts of lust for social position, or for the appearance of social position. Forms of egotism include pride, conceit, competitiveness, and lust for power. (Nagel 2009:39)

For Rawls, egotism was something to be repented. For Leon, however, the solution is even more radical: even worship of God was a manifestation of egotism as it allowed the worshipper to identify himself with God and thus break down the barrier between humanity and the divine. The worshipper becomes connected to the divine, an act of supreme egotism (see Nagel 2009:87). Adams uses a passage from Leon to make this clear.

... there can be no intimacy with abstractions (qualities, attributes), which are objects of valuation. Nor is there intimacy with persons we esteem, respect, honour, praise, admire, or otherwise laud (that is, we laud their attributes or “characters”). (Nagel 2009:87)

So, for Leon, the height of spiritual and moral attainment is found paradoxically in the condition of complete renunciation of anything that can be interpreted as egotism. It seems striking that the attainment of true discipleship, in the case of the thesis, and true justice, in the case of his *magnum opus*, are each only possible after false spiritual pride, in *ABI*, and any intellectual, social and economic standing, in *TJ*, are removed. What emerges is the similarity in which these respective outcomes are met; a pattern of setting aside what Rawls holds to be problematic so that the desirable can be achieved. Even if the matter under debate is different, it is possible to detect a similarity in the outcome of the argument in both works. This conclusion is stronger than that which seeks a connection with Rawls’ rejection of merit. In that case, as shown, while there is certainly a similarity in outcome, the manner in which the argument is developed in each work is unrelated in shape as well as content.

*ABI* is a fascinating insight into Rawls' personality and development. Christianity clearly had a powerful influence upon him. On the one hand, it reveals that the progressive attitude that lies at the heart of *TJ* was a longstanding concern that can be traced back to a stage of his life that may reasonably be regarded as a period when he was still under formation. Given the continuity between Rawls the undergraduate and Rawls the mature social philosopher, it is also reasonable to suggest that Christianity, given the concerns of *ABI*, must have played a significant role in the views of Rawls as he matured. On the other hand, Rawls' formal rejection of Christianity must equally clearly be heard. However sincerely he held Christian belief as an undergraduate, his experience of the Second World War swept it away. This rejection, on the evidence provided by *OMR*, only deepened and widened as he grew older.

The view expressed earlier that Rawls must be regarded as a secular humanist who was, for all practical matters, an atheist, is an accurate one. This is not to imply that a pejorative cloud should accompany him as a result. It is necessary rather to identify him as such, so as to grant him the integrity to which he is naturally entitled, and which Cohen and Nagel, with their talk of a "deeply religious temperament" obscure. This has not prevented Rawls being a thinker with whose ideas Christians have engaged. This is unsurprising given the importance of Rawls' thought. One such theologian is Nicholas Sagovsky who in *Christian Tradition and the Practice of Justice* (2008) writes accurately of Rawls' achievement.

Rawls' reconstruction of a theoretical account of justice in the social contract tradition, against the dominant utilitarianism, proved so successful that it continues to dominate discussion in social philosophy, politics, social policy, in all the fields (with the possible exception of the legal) concerned with the practice of justice.

In the light of this, Sagovsky continues

This is why any Christian theology which asks what the churches can together say in the public domain must engage with his thought, probing to what extent his philosophical reasoning can be accepted on theological grounds. (Sagovsky 2008:121)

Sagovsky is surely right in this. Any serious engagement with social philosophy and policy matters must deal with Rawls. Unless this is done, then the ability of Christians to debate and contribute to emerging thinking and policies will be hugely

inhibited. However, this is a challenging business. This is shown in a question that Sagovsky frames in response to *TJ*.

His 'thick' account of justice in *A Theory of Justice* raises the question: to what extent can the churches find resources for active participation in and critique of liberal, democratic society in the theory he offers? (Sagovsky 2008:121)

The thickness referred to here is Rawls' own expression to denote the detailed nature of how justice is to be achieved in *TJ* and which stands in contrast to the rather thinner approach of *PL*. In reply to his question, Sagovsky rightly suggests that many Christians share Rawls' concern for the least powerful.

If Rawls' prescription were followed, it would mean that the 'justice' of social advantage would always have to be judged by its impact on the least advantaged, which from a Christian point of view is much to be applauded. (Sagovsky 2008:129)

However, as Sagovsky continues, there is an enormous amount of detail involved in deciding what may constitute justice in a particular area of social policy (Sagovsky 2008:130). Such detail is not, though, Rawls' concern (Rawls 1971:7). His endeavour is to create the fundamental mechanism upon which such matters can proceed. Both approaches have their place. However, there is a danger that an expression like 'justice as fairness', if it is detached from the massive amount of work in *TJ*, can become something of an empty slogan. Similarly, as Rawls came to appreciate by the time he wrote *PL*, there are different conceptions of what is just based upon perfectly reasonable grounds, including a religious view. A simple illustration of this is the different understanding of justice that applies in many matters of medical activity, such as abortion. It is this observation which provides Sagovsky with the basis of his difficulties with Rawls.

He criticises Rawls from two related directions. The first of these is similar to the second question posed at the opening of Chapter Two and which is referred to again at the beginning of Chapter Four, namely whether the British army has a need to be different in terms of goods, and whether this is just. In Sagovsky's case the issue that gives rise to this concern is whether there is sufficient tolerance in Rawls' scheme to permit Christianity to operate freely. As noted in Chapter Four *TJ* offers a "comprehensive philosophical doctrine" which leaves, by extension, no room for alternative explanations. As Christianity, clearly, is also a comprehensive scheme,

some kind of conflict is inevitable. Sagovsky comments that there is a tendency, usually only normally embryonic in liberalism, to act aggressively against views it determines to be a threat (Sagovsky 2008:144). Rawls himself, as shown in Chapter Four, came to see this, and it led him to publish *PL*. He concedes that many convictions will be held with society which, if reasonable, will be tolerant of one another. Despite this the conception of justice as fairness is still one that will lead to tensions with other views. Sagovsky comments:

We have seen increasing pressure on the churches to construe questions of authority, sexuality, gender roles and relations, reproduction, employment, education, communication and decision-making in terms of human rights and the received liberal agenda. (Sagovsky 2008:144)

This leads to the second, and connected, criticism that Sagovsky makes. He compares the richness of the Christian concept of justice with that of Rawls. Earlier it was commented that the notion of fair society was one that Christians could share with Rawls. This comment is one that can be extended to include all people of good will across the whole spectrum of views of how society should be organised; even leaders of totalitarian regimes express sentiments that reflect the highest ideals. This relates to the lack of detail which explores what justice as fairness means when applied to the complexity of social issues that was touched upon earlier. Justice as fairness seems to be remarkably two-dimensional when placed into the maelstrom that often characterises the complexities of public life. Sagovsky writes convincingly.

There are, however, bound to be conflicts between liberties, between needs, or between laws, and there are bound to be points at which the Christian must conscientiously withhold assent. The vocation to do so would at that point transcend the believer's normal obedience to the providential ordering of God. (Sagovsky 2008:214)

Whilst the record of Christianity is, overall, ambivalent when it comes to matters of justice, there are nonetheless many occurrences where Christianity has followed a path of integrity. Christians have often struggled to follow what they have perceived to be God's will following a process of reflection of what historically have been the sources from which Christian understanding has emerged, such as Scripture.

These views, whilst fair in the light of the rather thin conception of justice at work in public matters at the present time, may give an impression of a state of incipient and worrying conflict between Christianity and Rawls' liberalism. Whilst *TJ*, as Chapter



Four shows, has significant failings, it presents a serious challenge to the Military Covenant. Although this challenge can be withstood, the achievement of Rawls in re-balancing the nature of how social philosophy is done, is not to be diminished. Whilst Christianity has its own tradition and methods of approaching the issues of society, Rawls has developed a powerful augmentation of Christianity's concern for justice, a sign of the Kingdom of God.

Related to this is Rawls' determination to show an alternative to the prevalence that utilitarianism has achieved in resolving many social issues, particularly in regard to medical issues. Rawls believed that the situation created within the original position established a bulwark against utilitarianism. The imposition of the veil of ignorance meant that even the best-off would not make disagreeable choices for the weakest in case they found themselves outside of the veil and inside that group themselves. Thus the interests of the individual are safeguarded against the majority (Sagovsky 2008:127). Ultimately the question of whether Rawls is successful in holding back the tide of utilitarianism by this means is an open one. In Chapter Four it was suggested that in fact the original position could be regarded as a utilitarian tool which brings about an outcome of the best justice for the greatest number.

This chapter has served to allow an investigation of an aspect of Rawls' life that is completely hidden in *TJ*. It reads as a completely secular work. This conclusion arguably reflects the position of Rawls throughout most of his life. As *OMR* shows, he was an agnostic and, despite the case that Cohen and Nagel make, integrity requires that this is acknowledged. This is not however a reason for Christians to fail to identify reasons for acknowledging Rawls as being a powerful advocate of the cause of justice with which they will seek to make common cause. Indeed, Christianity clearly did play a part in shaping Rawls' views, both in a positive and negative sense. Ultimately, the same argument employed in Chapters One and Two, in which the background of the Military Covenant was explored perhaps applies. Just as it emerged from the confluence of several streams, the same would appear to be true in the development of the valuable contribution that John Rawls has made to the understanding of justice.

## Chapter Eight

### Turning Point: The Influence of Rawls' Ideas in the UK

In the preceding chapters, while the general compatibility of the Military Covenant and *TJ* has been argued, substantial criticisms of Rawls' secular humanist conception have been made. Nonetheless, despite these criticisms, the United Kingdom remains susceptible to the philosophical outlook to which his approach belongs. Contemporary public policy is in danger of losing contact with the substantial heritage provided by Christianity. According to Ward:

The great dissociation of religion from public life is perhaps a recent phenomenon, but it then becomes represented, and defined as the prevailing condition of modernity, by certain liberals. Foremost amongst them would be John Rawls. (Ward 2009:141)

Despite the criticisms made of Rawls' views, they have become widespread: his espousal of the cause of fairness is a leading idea in public policy while his removal of religion as a part of the same is increasingly accepted. In the British context, this latter trend is visible in the work of the social philosopher Lady Mary Warnock. In *Dishonest to God (DG)*, published in 2010, the secular humanism that Ward associates with Rawls is seen in her book. In this chapter the extent of this influence will be indicated through considering her work in relation to a particular response by a Christian public thinker whose career bears some similarities to her own. This will enable further light to be thrown on the concept of covenant and how it sits in the contemporary world, part of the first question which frames this study. What will also emerge is a substantial area of common ground which is suggestive of a further area of study concerning the Military Covenant.

Although Warnock does not refer to Rawls directly in *DG*, she is well-acquainted with his thought. However her reaction to him is perhaps surprising. In the preface to the first edition of her *Ethics Since 1900*, published in 1960, she was uneasy with political philosophy generally, clearly the branch of philosophy to which Rawls belongs, and excluded it from her book. She regarded it as a separate branch of philosophy, although she does understand that it is "very closely related" (Warnock 1978: Preface to first edition). In the preface to the third edition, published in 1978, she explains that the decision to ignore political philosophy was "naive" and its inclusion in this edition was "a major change" and that "it is no longer possible to

distinguish moral from political philosophy” (Warnock 1978: preface to the third edition). Therefore, towards the end of the third edition, she does give a two page outline of the aim of *TJ*. She states that *TJ* is “probably the most widely discussed” book published on political philosophy in recent years (Warnock 1978:136). However although she summarise *TJ* fairly, the most notable description she provides of it is as a long book, which does not appear to be a commendation (Warnock 1978:136). She concludes:

It has been worth spending a little time on Rawls’s theory because it has been so much discussed, and because of the very size of *A Theory of Justice* has impressed, if not intimidated, philosophers. But the criticisms of the theory have been equally impressive, though much shorter. (Warnock 1978:137)

She refers specifically to the criticism of Robert Nozick, discussed earlier. For Warnock herself though, the main criticism she offers, and it is implied rather than directly specified, is that *TJ* is a work that is do with politics as much as philosophy. It is a partisan book, rather than one which contains a “dialogue” between people of different persuasions (Warnock 1978:137-8). What is striking about Warnock’s consideration of Rawls however is their shared rejection of Christianity as a reasonable contributor to public policy discussion is not something that is mentioned by her. The conclusion arises therefore that the secularist outlook of *DG* is not due to Rawls, but arises independently from him. However, such is the similarity of their view concerning the role of religion in public life, their independence from each other is simply illustrative of the strength of secular humanism. Emphatically, they do belong to the same outlook in the matter of Christianity in the public square.

In *DG* Warnock is particularly animated by what she perceives as the authority that Christianity claims in moral matters.

It is probably an over-simplification to describe ours as now a secular society. But there is enough truth in the description to make it inappropriate and conceptually confusing to let morality and law be grounded and justified only in the name of religion. (Warnock 2010: 11)

This comment resonates with what Rawls wrote concerning reasonableness and rationality, and considered in Chapter Six.

At almost the same time as *DG* was published, Richard Harries, a distinguished retired Church of England bishop and active life-peer, produced *Faith in Politics? (FP)*. Whilst Warnock opposes a normative role for Christianity in public matters, Harries seeks to legitimise such a role. He, like Ward, recognises the significance of Rawls. He understands Rawls' repudiation of Christianity and places it in the context of the American constitutional separation of Church and State. However, he clearly still regards Rawls as significant beyond US shores. With the later Rawls in mind, he thinks that the repudiation of comprehensive world views in *PL* allows Rawls to leave his own ideas subtly in place, which is the argument of this thesis too. Unlike this thesis, however, Harries holds that Rawls' position is actually paradoxical to his secular humanism and, awkwardly for this thesis, gives religious voices a platform:

My own view, on the key issues thrown up by Rawls are, first, despite his disclaimer, what he advocates is in itself a comprehensive view, one which gives overriding value to the principles of religious freedom and equal treatment. (Harries 2010:16).

Given the radically different perspective that Warnock and Harries have concerning the place of religion in public discourse, an examination of their arguments provides a significant opportunity to see how active and influential figures, as opposed to more conventional professional academics, deal with its role. The outcome of this debate may throw light on the appropriateness of the theological roots of the Military Covenant. It may also show that when protagonists are compared, particularly when they are engaging with issues other than at a theoretical level, areas of agreement can be found.

It is also significant that both Warnock and Harries are British and therefore reflect the context of the Military Covenant. Equally senior figures (Warnock was born in 1924 and Harries in 1936), they share exposure to cultural changes that have taken place since the end of the Second World War. Apart from each being Gresham Professors and members of the House of Lords, they also share a professional connection due to their work concerning ethical issues surrounding the biological origins of human life. From 1982 to 1984 Warnock chaired an inquiry into human fertilisation which proposed the establishment of a regulatory authority to oversee the use in treatment, storage and research of human embryos outside the body. This was crystallised in the Human Fertilisation and Embryology Authority of which

Harries became chair in 2006 until its amalgamation with the Human Tissue Authority in 2007. He chaired the Ethics and Law Advisory Group of that organisation.

*Dishonest to God* carries Warnock's argument accessibly and contains a structure that is useful in framing a debate between her and Harries. She begins her case, which is that religion has an illegitimate role in public life, by outlining how religion has featured in significant Parliamentary debates on life issues. The first is the issue of abortion. In 1965 a Private Members' Bill was passed by the House of Lords which would have liberalised considerably the practice of abortion, which was occurring legally but with a lack of evenness. However, Parliament was dissolved and the Bill never became law. In 1966, when the new Parliament convened, David Steel introduced a similar Bill in the House of Commons. The Bill was subject to what Warnock describes as "a rough and slow passage" (Warnock 2010:13) and although the Bill this time received Royal Assent, it was less permissive than its predecessor. Warnock explains that although there was widespread acceptance that a new law was needed, concern was expressed about whether social, as opposed to medical, reasons for an abortion were acceptable. Implacable in its opposition was the Roman Catholic Church. Warnock fastens on the expression "the sanctity of human life" as key to understanding this opposition (Warnock 2010:15ff). She summarises the phrase as meaning that "... a foetus is both human and alive and its life must therefore be protected as much as any other human being" (Warnock 2010:13). To explore the meaning of this, she outlines the views of three Christian parliamentarians in order to make two general points. She seeks to demonstrate the overt presence of Christianity in public debate and that the position that Christians take in such debates varies; there is not a single position that commands assent.

The first person she considers is Norman St John Stevas (Lord Stevas), then a leading Roman Catholic. According to Warnock, Stevas makes a distinction between Catholic tradition and a broader view that permits religious and non-religious people to find common ground. Stevas suggests that if the death-penalty cannot be regarded as morally acceptable, neither can abortion. Warnock has some sympathy with Stevas' attempt to find "a shared morality having priority over the teachings of the Church" (Warnock 2010:19) even if the conclusion that post- and pre-natal life

has equal value is not one she shares. She next considers Lord Longford who advocated the conventional view of the Catholic Church: life is sacred and that abortion is a denial of that principle. Warnock regards Longford as someone who is unclear and who lacks the clarity of Stevas and she has no sympathy for his view (Warnock 2010:19). Finally the contribution of Lord Soper, a renowned Methodist clergyman and peer, is considered. He shows most clearly the diversity of views found in Christianity. Soper bases his view on his practical experience of working and helping vulnerable women upon whom abortion law impacts. He felt that the onus of responsibility that the social clause placed upon members of the medical profession was a heavy one and that, according to Warnock, he implied it was right for a woman to decide for herself the propriety of having a termination (Warnock 2010:21). Soper discusses life as a process of being rather than happening at a single moment. He was therefore unwilling to ascribe human life, with all its complexity, to a single moment such as conception. "There is no instant method of distinguishing at one point or another what is existence and what is non-existence. The whole thing is a process." (Warnock 2010:21). In Soper's case, Christianity fosters a general charitable ethos rather than a forensic answer to a social issue like abortion.

The views of St John Stevas, Longford and Soper are used to establish Warnock's argument that Christians claim a special authority or, better, special knowledge, for their views. This is the view that has been encountered in the outline of Rawls' work that has been provided earlier. Even the one person with whom she feels some agreement, Lord Soper, is not fully accessible to her. Soper, it appears to Warnock, allows his religion to complicate his moral thinking, a clue for what follows in *DG* when Warnock discusses the origins of morality. It seems to her that those who argue for the sanctity of life from a faith-basis lack a measure of self-awareness.

Perhaps what Lord Soper's remarkable speech teaches us is the complexity of the relation between religious belief, moral evaluation and theology. We may distinguish religious belief, which may in turn inform the believer's whole value system and all his moral thinking, on the one hand, from theology on the other. It is from theological dogma that the doctrine of the 'sanctity' of human life from the moment of conception derives. (Warnock 2010: 21)

This attempt to distinguish religious belief from theology is questionable. The relationship between theology and belief is as inextricable as is the relationship between the law and courts of justice. This is the key opening point that Harries makes in *Faith in Politics*. In comparison to Warnock who wishes to see the removal of religion from policy and legal development, he fastens on what he terms the “bedrock of the system” which, in the debate being outlined here, can be considered a riposte (Harries 2010:4). He argues that it is impossible to undertake a dissection of political culture in order to remove the influence provided by Christianity.

Furthermore, although it is widely held that the leading political notions of our time nearly all derive from European thinkers from the seventeenth to the nineteenth centuries, usually termed ‘the Enlightenment’, I will argue that these notions are in fact deeply embedded in a Christian understanding of what it is to be human in society. (Harries 2010:4)

Harries’ understanding is therefore directly opposed to Warnock’s. Whilst it is likely, given what can be deduced about Harries’ views from his career, that he may disagree with the views of Christians like St John Stevas and Longford, he will support their participation in public matters as perfectly proper. He illustrates this by referring to the contribution of Christians in a Parliamentary debate about the end of life to show the rooted nature of religion that makes its removal unrealistic.

In recent debates in the House of Lords on assisted dying, there was almost no appeal to a specifically religious argument. On the other hand, it was clear that the weighting given to certain arguments did often depend on a person’s underlying philosophical and religious perspective on life. (Harries 2010:18)

In the arguments used by Warnock and Harries there is a clear difference in approach. There is a precision in Warnock’s line of reasoning: she seeks to construct a smooth and carefully delineated approach. In comparison, Harries relies on two factors: the historical role of Christianity in UK culture and the continuation of that tradition in contemporary debate both of which are too significant simply to be sieved out.

Underlying Harries’ approach is the firm view that Christianity is inherently reasonable. In his *Reason, Faith, and Revolution* (2009) Eagleton addresses this issue. Rawls and Warnock are attracted to philosophers who can be regarded as high rationalists. Rawls, as discussed in Chapter Three, shows a connection with

Kant and the Categorical Imperative while Warnock, as will be seen, is attracted to Comte and Positivism. In both cases traditional religion is questioned. Eagleton defends Christianity by challenging sceptics to consider whether reason can be confused with certainty (Eagleton 2009:115). Using secular examples of where people have been certain of Truth he shows that terrible abuses have occurred. What seems reasonable therefore can actually be deeply irrational. A little earlier he had suggested that even if proof of God's existence could be provided to the satisfaction of atheists then that alone would not lead them to Christianity.

Those who demand a theorem or proposition rather than an executed body are not on the whole likely to have faith in any very interesting sense of the term (Eagleton 2009:113)

In other words, factors other than a pure and authentic pursuit of rationality are involved in people's responses to religion. While the position of sceptics can thus be questioned, Eagleton goes on to deepen his position by arguing that Christianity must nonetheless be reasonable and its adherents must be able to articulate their beliefs. Eagleton's view is that human beings construct an approach to life that fits the experiences that they have. Christianity, like other worldviews, in this sense 'works'. He explains this by discussing the experience of love: a person, because of his individuality, may well prove attractive to one person yet not to another (Eagleton 2009:116). This experience is not simply the same as knowledge, though. It has a power to motivate into action a considered and moral response. Beneath this approach, he explains, is the contemporary French atheist philosopher Alain Badiou who describes authentic human living as arising as a response to pivotal encounters in life (Eagleton 2009:117ff). Eagleton has unspecified criticisms of Badiou (Eagleton 2009:119). He certainly is a thinker who sits lightly upon the Enlightenment values with which Harries wishes to associate. However what Eagleton successfully shows is that there is an alternative view of rationality to that of the reductionist tendencies of Rawls and Warnock. Eagleton wants to move behind the assumptions of secularism: "For St Anselm, reason is itself rooted in God, so that one can attain it fully only through faith." (Eagleton 2009:120). This shows that some Christians have an understanding of reason fundamentally different intellectually from someone like Warnock.



Following her consideration of abortion, Warnock goes on to address a number of life related issues; research involving human embryos, in-vitro fertilisation, and the cloning of animals. Warnock locates Christian comment on such matters in a general idea that in nature there are norms that should be followed (Warnock 2010: 38). She refers to Hume to argue that this dependence upon “nature” and what is “natural” is erroneous. For Hume there is a difficulty in deciding what constitutes nature. Most people tend to share the sense that what is natural is good. However, human interventions, such as medicine, are capable of improving what is found in nature (Warnock 2010:38). The world is a combination of what is given in nature and human activity. This is an argument in favour of development and complexity and to imagine that there is a view of the good that can be ‘read’ off from nature is naive.

The process of this argument is paradoxically what Rawls and Warnock wish to do in relation to Christianity and the public square. The transformation of nature by human endeavour so that the two become so connected that they are indistinguishable is analogous to how culture is found as a whole. Hume’s argument that nature is indivisible from what naturally occurs and what human creativity has brought into being, provides the shape of an argument for those who are committed to religious voices in society’s affairs. Even if it was practical, the removal of religion would result in a dysfunctional and desiccated culture. This is in essence the argument that Harries makes above. In addition to historical and cultural factors, for Harries there is a further argument that justifies the inevitable presence of Christianity in public life: it reflects human behaviour.

In the debates on stem cell research a key question is of course the moral status of the early embryo. So the issue cannot be discussed without taking into account people’s comprehensive world-view. (Harries 2010:17)

Harries is rehearsing the commonly accepted view that no one enters public debate without a set of presuppositions. It is unrealistic for a person to have the level of personal disinterest that both Warnock and Rawls advocate. An individual’s character and views are shaped by a nexus of factors that includes both those that can be described as cognitive, such as the beliefs someone adopts, and those which are not, such as an inherited nature. In public debate religious ideas are part of this process; to imagine otherwise is not just unrealistic but also illiberal. That is not to suggest that all ideas have equal value. Some beliefs are clearly beyond the pale of

acceptability by being irrational or unreasonable because, for instance, they do not lead to public good. However the extent of this toleration is certainly wider than Rawls or Warnock are willing to admit. An element of reasonable discernment is necessary. As Harries writes:

People too often assume that a religious perspective offers a straightforward alternative to a non-religious one. In fact the way that a religious perspective best operates is by illuminating some field of which we are only naturally dimly aware. It helps us see truths that may be half hidden. (Harries 2010: 20)

Having sought to show the pernicious nature of Christianity in public life, the second stage in Warnock's argument is to make a case for the separation of religion and morality.

That it has been difficult to distinguish between moral and religious arguments over the essentially moral issues I have so far considered does not entail that there is really no difference between them, or that the difference is not significant. I shall later try to show that one set of arguments – that based on moral considerations – has logical priority over those based on faith, religion itself being, in part, an expression of pre-existing moral beliefs. (Warnock 2010:71)

For Warnock this is a decisive distinction, although it begs a major question: why should non-religious ideas have logical priority over religious ones? What is intrinsic to such ideas as to make them not just more *worthy* than those based upon faith, but also having a greater priority? It appears that she is relying on the contentious view that morality is independent of religion. While moral *conduct* may well be possible without overt reference to a religious view, this is not the same as conceding that morality in its *essence* is not connected to, or predicated upon, religion or at least a worldview of some kind. Harries draws attention to the importance of this issue by making a qualitative shift in his discussion.

Our membership of families, communities and society is a fundamental feature of our identity. It is therefore legitimate to take the history, culture and religion of our society into account when we are thinking of our political arrangements. (Harries 2010:14)

Christianity, for Harries, is a defining characteristic of British civilisation. If Rawls' view prevails, then there will be a fundamental change to this heritage. This will involve the emergence of a new and comprehensive settlement of the UK's cultural and political basis based upon secular humanism which disregards faith-perspectives. It is with achieving this in the UK context that much of *DG* is

concerned. Warnock attempts to remove any normative role for Christianity and outlines with what she would replace it (Warnock 2010:7).

The third step in *DG* begins with a discussion about the relationship between morality and law, a topic that arguably deserves more attention than she provides. For Warnock, although religion needs to be removed from a policy area such as law, the same is not true of morality. Morality is a fundamental part of the human experience and is the crucial source for law (Warnock 2010:83). She indicates two sources for it. Although the evidence for the first of these is rather thin, being a short comment, it does follow an approach observed in Rawls. She suggests that there is a moral awareness that people possess that resembles the innate moral instinct discussed in Chapter Six. Criminal law must reflect what people regard as acceptable (Warnock 2010:84). This is an indicative comment for what follows in Warnock's conception.

The second basis for morality operates as a balance to it being simply what society is willing to accept. In her book Warnock refers to Lord Devlin (1905-92), a noted Law Lord and jurist, who argued that society needs agreed standards if it is to hold together (Warnock 2010:85). Whilst Warnock concedes that this is to some extent true, she shows that this can lead to dangers. It is not impossible that a majority of people, for example, might favour something that is morally outrageous, such as torture (Warnock 2010:88). To guard against this she refers to J.S. Mill's *On Liberty*. She accepts Mill's argument that the law should have no powers to intervene in a citizen's private life, unless to prevent harm (Warnock 2010:85). Individual liberty is therefore a standard that militates against the rule of the mob.

Having disentangled religion from morality, and having provided a non-religious origin for it, Warnock then goes on to set out the reasons for distinguishing law from morality. Law has a practical authority that cannot be given to morality, despite its crucial importance (Warnock 2010:90). For Warnock, morality is noble. It not only sets out what is right and wrong, more positively it also commends how to live. However, its weakness is that it never commands complete assent as to what is the good: well-argued alternatives exist. In comparison, in the liberal-democratic

tradition, law gains authority because of the process by which it emerges and which gives it legitimacy. However, if law is uninformed by morality, as in totalitarian states, it is potentially dangerous. Some laws can be immoral.

Although Harries and Warnock differ fundamentally over the role of religion, they do share the same view concerning the importance of morality and its relation to law. The conversation between secularists and religious is a nuanced one in which fundamental disagreement nonetheless gives way to areas of common outlook. Like Warnock, Harries is clear in his evaluation of the importance of morality.

So the law does not criminalise every vice, nor according to Aquinas does it prescribe acts of all the virtues. It is concerned only with those virtues that make for the common good. The moral law covers all the virtues, but civil law is limited to what enables society to function. A good example is that of lying. Lying is immoral but the law is concerned only with those lies which impinge on our life together, such a perjury. A man who lies to his wife is immoral. If he lies in court he is both immoral and a criminal. (Harries 2010:45)

Warnock and Harries not only share the view that morality precedes law; they are concerned also about what *directs* morality. As indicated, Warnock relies on an innate popular notion of what is appropriate, checked by a sense of the dignity of the individual. These are both closely related to a specific aspect of human nature that plays a key role in her conception of morality.

... a society that possesses institutions of government and an interest in the rule of law depends on at least some members having goodwill, that is, a wish to do good rather than harm. (Warnock 2010:113).

For Warnock, the capacity for virtuous behaviour is an essential part of humanity. For her human thriving is dependent upon the willingness of *some* men and women to behave well. Harries shares the view that morality has to command widespread acceptance and that virtue plays an equally important role. It has an aspirational aspect which he illustrates by referring to T.S Eliot who advocated a Christian basis for society because it was a means that made for the well-being of all and not just those of the faith.

Although this kind of view is not in fashion, it is still worth thinking about. Is what he calls 'the natural end of man – virtue and well-being in community' a goal around which even our multi-faith society could unite? I believe it is worth testing out. (Harries 2010:46)

Harries too would recognise that human nature has a benevolent aspect. The source of this reflects the difference between him and Warnock. Whilst for Warnock this lies wholly in a humanistic view of personhood, for Harries there is a theological perspective.

That natural end, virtue and well-being in community, does, I think, depend on a much deeper and richer concept of both law and morality than we have in our society at the moment, and I think that we need to draw again on the deep wells of traditional Christian thinking on this subject. (Harries 2010:46)

So the introduction of virtue is paradoxically both an area of agreement between Harries and Warnock but also one which reveals that each has a fundamentally different anthropology. Significantly however, despite this complex situation, there is likely to be sufficiently widespread *practical* agreement on many issues. Warnock is likely to agree with Harries when he comments that “the natural end of human life is not simply well-being but virtue, and not just individual well-being but well-being in community” (Harries 2010:47) and with the illustration he provides in an extended passage in which he discusses the Parliamentary expenses scandal of 2009 (Harries 2010:47-50). It is unlikely that Warnock would disagree with his comments. The implications of this, however, should not be hardened into an enduring model of co-operation between people of fundamentally different underlying convictions. Rather the kind of situation that Rawls outlines in *PL* where people of different outlooks nonetheless find sufficient *modus vivendi* to work together can be seen (Rawls 2005:146).

Behind this pragmatism the argument that Warnock has so far developed in her advocacy of secularism is successfully met by Harries. He succeeds because he adopts an approach based upon the factual contention that Christianity has played a seminal role in the understanding of the common good in contemporary public life. It is undesirable and impossible to remove Christianity’s role. Harries is not arguing for a privileged position for Christianity. When he engages briefly with Dworkin, a strong supporter of the US constitutional arrangement that excludes religion from schools, he refers to the then Archbishop of Canterbury, Rowan Williams, who advocates a view of public debate as a market place in which many voices, including the religious, can be heard and from which none should be eliminated without reason

(Harries 2010:15). Harries wants a multi-voiced debate in the public realm. He illustrates this in his defence of the role of Church of England bishops in the House of Lords. In the view of many, and Warnock is a good example (Warnock 2010:104-109), the presence of the bishops is an anachronism that should be removed. With Dworkin's American background in mind Harries comments in a manner that is also a conclusive summary of his views:

Here I would want to suggest that we cannot ignore the history and culture of a society, which will inevitably be reflected in its political arrangements, and the religion of a society is an integral part of that history and culture, part of its identity. We are not just isolated individuals... It is therefore legitimate to take the history, culture and religion of our society into account when we are thinking of our political arrangements. However we need to make a distinction between what is a purely symbolic privilege, and one in which other religions feel that their rights are being denied. (Harries 2010:14)

The importance of virtue for Warnock may be thought to be an unexpected area of agreement with Harries. Her combination of the popular mind balanced by the safeguard of individual liberty could be considered to provide an adequate basis for morality. However, in the remainder of *DG* she commends the crucial place of virtue. As with their views on human nature this harmony is more apparent than real. Harries' comments about virtue are essentially conservative. The Christian tradition, however it shifts through time, must still, to remain Christian, retain sufficient continuity of content. Virtue in any age must be recognised as reflecting broadly understood Christian tradition. Warnock, however, expresses the opposite to this. She begins her exploration of virtue by considering relativism. A person's moral sense has to be open to adaption (Warnock 2010:110), which may be regarded as the fourth step in her argument against religion and in favour of secular humanism as the basis for British public policy discussion.

Warnock acknowledges that this endorsement of relativism in morality is not something with which all are comfortable (Warnock 2010:110). She considers whether the concept of human rights provides a modern acceptable counter to relativism. However, she concludes, human rights are ultimately a set of aspirations and rely on law for any practical authority (Warnock 2010:111). For Warnock they are in essence no different from any other moral code, and they too, therefore, are subject to the same judgement, that of being relative.

A trenchant critic of relativism is the American historian Gertrude Himmelfarb. Born in 1922, two years before Warnock, she connects the emergence of relativism with a ruinous deterioration in social standards. In *The De-moralization of Society* (1995) she argues that relativism in morals makes decisive judgement-making impossible. Without this ability the consequences are disastrous.

In recent decades we have so completely rejected any kind of moral calculus that we have deliberately, systematically divorced welfare – no longer called ‘relief’ – from moral sanctions or incentives. This reflects in part the theory that society is responsible for all social problems and should therefore assume the task of solving them; and in part the prevailing spirit of relativism, which makes it difficult to pass any moral judgements or impose any moral conditions upon the recipients of relief. (Himmelfarb 1995: 242)

Himmelfarb argues for the restoration of an ethos that was present in Victorian times based upon utilitarianism and evangelicalism. Although philosophically incompatible, she argues that they nonetheless generated a practical ethos of morality (Himmelfarb 1995:241ff). She shows that, rather than having a pernicious impact, religion has had a positive one (Himmelfarb 1995:257).

Warnock’s argument that there is no objective basis to morality (Warnock 2010: 110), achieved by her repudiation of traditional sources, such as religion, as well as a more recent one, human rights, clears the path for her to commend virtue as providing a basis for morality. However, as her view of morality rests on relativism, her notion of virtue *and what it leads to* differs from that provided by Harries. For him the virtue which makes for the well-being of individuals and society itself lies in God. Nonetheless, the fact that Harries and Warnock both emphasise the importance of virtue is given significance because, as was shown in Chapter Six, Rawls also relies on virtuous behaviour if the good life is to be pursued. Through his Aristotelian Principle, the pursuit of the good life is of importance and *human character* has a role to play. *Harries, Warnock and Rawls certainly have differences about virtue, but each has a place for it.*

For Harries, while all human beings are capable of behaving in a virtuous manner, religion offers a distinctive quality of moral conduct. In comparison, for Warnock

virtue is not linked to a divine disclosure. It is something that lies wholly in human nature.

To be a truly moral person ... is to exercise imagination, to be able to understand the situation of other people, their feelings and their motives, to be capable both of sympathy and of a reasonable judgement of what the consequences of your actions will be, how they will affect other people than yourself. (Warnock 2010:112:)

Imagination establishes a sense of mutuality that creates a consistency of action which becomes morality. This develops beyond just being a set of inter-acting personal moralities to become generalised and so creates a moral basis for society. Warnock herself shows that much of this draws heavily on the work of David Hume.

We positively need morality to alleviate the predicament that we are all in together. We cannot make things perfect (though we can have visions of perfection) but we can at least determine not to make things worse. This, it seems to me, is the basis of our admiration for the human virtues ...it is imagination that enables us to aspire to a world in which such virtues prevail. And it is our human ability to recognise such virtues that is the foundation of morality. (Warnock 2010:121)

So far, Warnock's argument in *Dishonest to God* has proceeded methodically through a series of stages. She began by rejecting the entwining of religion with morality as undesirable. She then set out the view that there is a connection between morality and law in which morality has precedence, even if law has a practical power that morality generally does not. Next, she dismissed religion and other alternative accounts as a basis for morality. She prefers to adopt a relativist position based upon the goodness of people. Virtue provides the foundation for morality (Warnock 2010:117).

Both Warnock and Rawls can be fairly described as liberal humanist secularists. However, there is a distinction between them. While both regard human nature as fundamentally good, they differ over the extent of this goodness. In the case of Rawls, the original position sets out a means for overcoming any selfishness that might lead the powerful to defend their advantages. In comparison Warnock discusses Auguste Comte (1798-1857), who coined the term altruism to explain that society rests upon a benevolence that naturally rises above negative aspects of human nature to make for overall good (Warnock 2010:121). Positivism, the movement that Comte and his followers formed, is the position with which Warnock



ends *DG*. She endorses its rejection of Christianity and God as providing some external reference for morality instead positing relativism anchored in virtue and community.

But it is a fact about human beings that they are possessed of both imagination and sympathy, and that they can be taught, probably more by example than by precept, to use their talents to lift their eyes beyond themselves, and to set themselves aspirations that include the wider world. They will then assert their specifically moral values, even in defiance of received assumptions. It is because they can exercise imagination that human beings cannot help but be aware of the precariousness of human life, not just their own. (Warnock 2010: 124)

The outline provided by *Dishonest to God* might suggest that Mary Warnock is a thoroughgoing rejectionist of all things to do with Christianity. She clearly has no role for Christianity as a provider of any realist notion of the universe (see Warnock 2010:128 and 144). However, speaking about the Church of England, she explains in the Introduction:

This is the tradition in which I was brought up, the tradition of the Church of England, and this is what forms the background of the culture within which I, and many others of my generation, feel at home. (Warnock 2010:2)

She acknowledges that “I personally would not at all want religion to come to an end”. Therefore what is the role of Christianity for Warnock? It is to give some substance to human longings and imagination.

... it is the persistence of the Romantic ideal that gives life to religion. Religion is more than a set of moral rules; it is more, even, than doing good in society. It is more than the stories that recount where the moral rules came from, Moses receiving the Torah, Jesus walking in the fields plucking ears of corn on the Sabbath and subverting the rule-governed rigidity of the Jews. ... The Romantic ideal opened up the possibility for each finite and short-lived individual to have access, through imperfect and patchy, to something more durable than themselves. It is not a philosophical theory (though Kant played into the hands of such a view); it is a felt response to the world. (Warnock 2010: 151)

Religion it seems, according to Warnock, is literally ‘comfort to the dying’ (From the hymn “Lord, thy word abideth”).

This chapter, which has concentrated on the British context, marks the turning point in this thesis. From the discussion two conclusions have been argued: that John Rawls in *TJ* has been very significant in establishing the axiomatic place of fairness

in contemporary public policy and that he is a firm advocate of liberal humanistic secularism. Both these positions have been exposed to examination by the Military Covenant. What emerges is that, as a means of putting in place an inclusive liberal and democratic state, *TJ* fails. The grounds for this are many. Taken as a whole, however, they throw significant doubt on his understanding of the social contract tradition. Equally, the reasonableness of the hard-edged secularism that can be associated with him is open to refutation. Once again, as discussed in previous chapters, the grounds for this conclusion are several.

These comments should not, however, mean that all that Rawls achieved is being disregarded. Underlying his quest in *TJ* to establish a just society is a genuine humanitarian concern that not only can be admired but used as a stimulant to find a more successful model. Similarly his secularism is not something to be wholly disregarded. He clearly represents a view which many seemingly share. It is therefore incumbent upon the likes of Richard Harries to argue their position so that opponents of religion in public life have to respond. Just as secularists like Rawls and Warnock differ in their overall approach, Harries and Eagleton, both challengers of a wholly secular approach to public affairs, also have differences. Eagleton is indicative of a more radical faith position. It is with this theme that the next chapter concerns itself, as the reasonableness of the place of the Military Covenant in the public space and its background is pursued.

**Part Three**  
**The Military Covenant and New Natural Law**

## Chapter Nine An Introduction to New Natural Law

### I Introduction

This study began with an introduction to the Military Covenant as a leading arrangement that connects the United Kingdom to its army. This concluded by posing the question of whether the nature of this link was fully appreciated. This view was based upon the difficulty that it was suggested contemporary commentators have in getting to grips with the meaning of 'covenant'. The contemporary culture that dominates public discourse is a secular one and not able to adequately understand the basis of the term. Chapter Two demonstrates the close connection between the concept of covenant and Christianity. It was argued that the religious foundations of the covenant-idea provide a moral depth that has largely disappeared from public awareness. The emergence of secular influence has created a situation where Christian heritage has disappeared to the disadvantage of society. The study then engaged with John Rawls who, it was argued, is the key figure in producing a liberal humanist secularism that deliberately excludes from the public realm ideas and influences, religious and non-religious alike, which do not share the characteristics of rationality and reasonableness. Although Rawls himself understood in his later life that such a heavy emphasis upon such qualities was not sustainable, his earlier understanding still remains influential and representative of a general attitude.

At the beginning of Chapter Eight it was suggested that a turning point had been reached in this study. The Military Covenant had been examined in relation to the leading ideas of *TJ* and the conclusion reached that the allocation of scarce societal resources in fulfilment of the Military Covenant was something that could be comfortably accommodated with it. However, the same cannot be held between Rawls and the affinity that exists between the Military Covenant and Christianity. The liberal secularism of John Rawls is inimical to the participation of the covenant-idea in public life because it can only be understood from a faith-tradition background. This offends Rawls' secularism. *So, it follows, the question then arises whether there is available an approach to public policy that is reflective of religious convictions while also responsive to modern conditions: in particular, is there an approach that is*

*accessible to all, regardless of world-view?* The challenge to finding such an approach is daunting. The views of Mary Warnock in the previous chapter are, it can be suggested, a useful statement of the current prevalence of a humanistic secularism that is largely dismissive of Christianity and its part in the public life of the UK. However, in this chapter an attempt to set out an approach that places the Military Covenant and perhaps religion generally, on a firmer footing will be made. Not only will this introduce to this study a leading ethical approach that is an alternative to Rawls, it will also enable the Military Covenant to be better located in relation to contemporary moral theory.

The basis for this chapter is provided by the work of Germain Grisez and John Finnis, two of the principal contributors to the movement known as New Natural Law (NNL), an approach that fits the question posed above. Grisez works as a confessional Roman Catholic theologian in the wake of the Second Vatican Council. He is critical of traditional natural law, particularly how it developed after the Council of Trent (1991:5). His principal work is *The Way of the Lord Jesus* which, it is planned, will consist of four volumes when completed. Currently three volumes have been finished, together with notes for the fourth. Although available in print version, it is best accessed as an online source. Owing to its length and complexity, Grisez has produced an authoritative summary of his thoughts in *Fulfillment in Christ* (Grisez 1991:xi-ii US spelling). This book is used in this chapter as a guide and source.

In this chapter, and alongside the writing of Grisez and Finnis, reference will be made to the work of Rufus Black, an Australian ethicist. Black is a significant interpreter of their approach and in his books *Christian Moral Realism* (2000) and *The Revival of Natural Law* (also 2000), edited with Nigel Biggar, he writes in a manner about NNL that presents it to a wider and non-Catholic readership (Biggar and Black 2000:xiii). This approach, it will emerge, is justified as it is a theme which will be referred to later in this chapter. Following Grisez, Black proceeds through five stages to set out the scheme. He begins with setting out the fundamental ideas that provide the theoretical framework of NNL in which the importance of free will is central. When stages four and five are reached, the concern has turned to issues of practical, moral living.

In this chapter an outline of NNL will be provided that reflects what Black calls the “sophisticated and supple moral theory” of the Grisez School (Biggar and Black 2000:1). In the second section, the difference between natural law and NNL will be explained. This will widen to discuss the legitimacy of moral discourse in relation to the scientific method and, by extension, challenge reductionist ideas. This will be done with reference to the Military Covenant. In the third section, the five steps of NNL will be set out, and its practical character will come into view with the approaches emphasis on living responsibly explained. The third part of the chapter will consider, by drawing upon Finnis, the role of religion in NNL. Finally, there will be a summary in which a comparison between Rawls and Grisez is made.

## II

### The difference between natural law and New Natural Law: the naturalistic fallacy

Black describes Grisez as “perhaps the most relentlessly systematic and analytic contemporary Christian ethicist” (Black 2000:2) although he is closely connected with a number of collaborators, of whom John Finnis was mentioned earlier, which means it is not inappropriate to discuss NNL as a school or movement.

Unsurprisingly, because of its age, many different writers have contributed to natural law philosophy. Its essence however is expressed by Augustine of Hippo, who wrote in the fifth century.

Some people read a book in order to discover God. But there is a greater book – the actual appearance of created things. Look above and below you, and note and read. The God that you want to discover did not write in letters of ink, but put in front of your eyes the very things that he made. Can you ask for a louder voice than that? (Augustine of Hippo *Sermons* 68,6 in McGrath 2015:12)

While this passage is theological in character, its essential meaning is that truth is to be discerned in nature. By reflecting on the universe, a satisfying understanding of ethics can be attained. It is conviction that unites approaches to natural law.

Although the origins of natural law lie in classical times, it is in *Summa Theologica* by Thomas Aquinas that is commonly regarded as receiving its best expression,

particularly in the second part of that work which is itself divided into two sections, *Prima Secundae* and *Secunda Secundae*. In *Secunda Secundae* Aquinas begins by considering the purpose of human existence. Like Aristotle in the *Nicomachean Ethics*, he fixes this as being the attainment of a happiness that rests upon the knowledge of virtue (Kenny 1980:21). The principal difference between Aristotle and Aquinas is the possibility of knowledge of God through such a pursuit.

The intellectual activity which satisfies the Aristotelian requirements for happiness is to be found perfectly only in contemplation of the essence of God; happiness in the ordinary conditions of the present life must remain imperfect. (Kenny 1980:21)

Despite the challenges to happiness in this life, Aquinas sets out a practical pattern in *Summa Theologica*: part of it reads as a plan for the social conditions under which the good life can be lived. This can be illustrated, strangely perhaps, in his treatment of the conditions when the making of war is justified in *Secunda Secundae*. In Question 40, Aquinas argues that war is wrong and evil. However, foreseeing circumstances in which a Christian society has to defend itself, there are conditions under which a (defensive) war can be fought. Three reasons are given which are recognisable as being a part of Just War Theory, which is associated with Aquinas in particular.

Thus, from the fundamental purpose of life, happiness (the 'is'), defensive war (which does not rule out aggression as a tactic) is something that is *natural* and therefore morally legitimate (the 'ought').

Creation has meaning and value placed upon it by God; to do what is morally right is to act in accord with the truth about ourselves. Thus, the theory seems consistent with the fact that nature has a certain normative character. By nature, for instance, monkeys thrive on bananas but not on hamburgers; they ought therefore to eat the one and avoid the other. Similarly, it seems plausible to say that, as nature generally sets certain requirements, so human nature sets requirements for what human beings should do and not do. (Grisez 1991:45)

Grisez, however, would argue that this way of proceeding is false. While he broadly endorses the same the goal as natural law (Grisez 1991:44), he would not accept that it follows that it is possible to justify the waging of war because it is logically connected to that end.

The connection in natural law from what is given ('natural') to how we ought to behave (morality) leads to the question of the 'naturalistic fallacy'. Grisez disputes that an 'ought' can be derived from an 'is' and thus he believes there is a fallacy in believing the morally correct is knowable from nature. Empirically knowable facts are not to be confused with moral values as a source for proper behaviour.

Central to the theory is the logically impermissible leap, from human nature as a given to the way human beings are morally obliged to choose and act. Logically, one cannot derive an "ought" from an "is." How reality is (a fact) does not by itself tell us how to respond to reality (a moral norm). The theory tries to overcome this problem by saying that God commands us to act in accord with nature, but that only pushes the difficulty back a step. Supposing God *does* so command, that by itself is only another fact; it tells us nothing about why we ought to obey God. (Grisez 1991:45)

The origin of the identification of the naturalistic fallacy lies with the Scottish Enlightenment philosopher David Hume who, it was suggested in Chapter Eight, was a key thinker in the emergence of empiricism. He states his position in an often quoted passage:

In every system of morality, which I have hitherto met with, I have always remark'd, that the author proceeds for some time in the ordinary way of reasoning, and establishes the being of a God, or makes observations concerning human affairs; when of a sudden I am surpriz'd to find, that instead of the usual copulations of propositions, is, and is not, I meet with no proposition that is not connected with an ought, or an ought not. This change is imperceptible; but is, however, of the last consequence. For as this ought, or ought not, expresses some new relation or affirmation, 'tis necessary that it shou'd be observ'd and explain'd; and at the same time that a reason should be given, for what seems altogether inconceivable, how this new relation can be a deduction from others, which are entirely different from it ... [I] am persuaded, that a small attention [to this point] wou'd subvert all the vulgar systems of morality, and let us see, that the distinction of vice and virtue is not founded merely on the relations of objects, nor is perceiv'd by reason. (*Treatise of Human Nature* Section Three.)

This passage is axiomatic in the development of the modern, secular world that is seen as an achievement of Hume. It is so important because it identifies a division and a separation between empirical and non-empirical understandings of the world and knowledge. It is the great divide between scientific and other forms of intellectual enterprise, such as the arts and the humanities. For the likes of Rawls and Warnock, it is an important part of what leads to their rejection of religion. If, as Hume



suggests, the basis of morality is not apparent, then the existence of God becomes questionable, at least as conventionally conceived.

Hume's distinction between 'is' and 'ought' is technically one form of the naturalistic fallacy. It was the English philosopher G.E Moore (1873-1958) in his *Principia Ethica* who definitively formulated it. He argued that it was wrong to infer from a natural property any moral value: to describe something good because it is useful is to make an unfounded leap between categories of understanding. A frequently cited illustration involves alcohol. Assuming that being pleasant is a natural property, for example, someone who infers that drinking beer is good from the premise that drinking beer is pleasant, has committed the naturalistic fallacy.

However crucially, the emergence of two different categories of knowing – the scientific and the non-scientific – that is involved in this need not be the triumph of scientific reductionism and positivism that it may appear. What more accurately emerges is that there are forms of intellectual activity that, although not open to empirical research, are nonetheless still rational ways of knowing.

One contemporary social ethicist who is very strong in accepting the naturalistic fallacy so that he can exploit it is the avowedly secular-minded American Ronald Dworkin in his *Justice for Hedgehogs* (2011). He argues that Hume's separation of empirical from non-empirical modes of knowledge is indeed epistemologically axiomatic and he bases his own approach as a moral philosopher upon it. He turns the separation of 'is' and 'ought' that calls into question the standing of ethics on its head to suggest that non-empirical knowledge has its own legitimacy which corresponds to reality (Dworkin 2011:7). He illustrates this with a historical example drawn from the twentieth century that invites incomprehension if morality is not real in the sense of being more than opinion.

It undermines philosophical skepticism, because the proposition that it is not true that genocide is wrong is itself a moral proposition, and, if Hume's principle is sound, that proposition cannot be established by any discoveries of logic or facts about the basic structure of the universe. Hume's principle, properly understood, supports not skepticism about moral truth but rather the independence of morality as a separate department of knowledge with its own standards of inquiry and

justification. It requires us to reject the Enlightenment's epistemological code for the moral domain. (Dworkin 2011:17)

Morality might not use the scientific method, but it is still a branch of understanding. Just as in NNL, there is for Dworkin two categories of knowledge. In his case he labels them as science and interpretation (Dworkin 2011:123). Each possesses its own integrity and produces real accounts of knowledge, although the manner in which this is done is different in each case. Ethics belongs to the field of Interpretation. Legitimate knowledge in this field is based upon reason and rationality which combine into an interconnecting web of moral convictions that offer mutual support (Dworkin 2011:101). Morality has no basis in theological or other metaphysical schemes (Dworkin 2011:26). Indeed it emerges from the exercise of human faculties which are *rational* in a manner that echoes Rawls' approach (Dworkin 2011:36-37). However Dworkin, in legitimately arguing that knowledge is more than can be established by the scientific method, is nearer than he probably feels comfortable to allowing that theology is reasonable, in the same way as is in his own field of philosophy.

The application of the question of the naturalistic fallacy has wide implications. It is significant for how the Military Covenant is understood. In Chapter One it was argued that the Military Covenant emerged from the moral legitimacy of defence, which is derived, ultimately, from the right to life. If that connection is understood as a *direct* one, in a hard sense that the right to life leads straight to the right of defence, it may be judged by Grisez to be an example of the naturalistic fallacy. If this is so then some deep waters are entered. It leads to the speculative comment that, if the "is" of life leads mistakenly to the "ought" of defence, there must be some better conception of the state for the promotion of human flourishing than that provided by the existing (liberal) model. This leads to a collision between Grisez with Locke and Hobbes. For them, the relevance of the state had been tested by their experience of the upheavals of the seventeenth century. Despite their differences, the state was the provider of circumstances in which individual human beings could best thrive. For example, in *An Essay Concerning The True Original, Extent And End Of Civil Government*, Locke argues that individuals can best experience autonomy when they are members of the state, which offers protection.

Political power, then, I take to be a right of making laws ... for the regulating and preserving of property, and of employing the force of the community, in the execution of such laws, and in the defence of the commonwealth from foreign injury; and all this only for the public good. (Barker 1960:4)

A little later the practical role the state has in providing defence is made explicit.

The state of war is a state of enmity and destruction ...it being reasonable and just I should have a right to destroy that which threatens me with destruction; for by the fundamental law of nature ... the safety of the innocent is to be preferred; and one may destroy a man who makes war upon him, or has discovered an enmity to his being ... because such men are not under the ties of the common law of reason ... that will be sure to destroy him whenever he falls into their power. (Barker 1960:11)

The introduction of the phrase “common law of reason” suggests that, for Locke, the right of the state to prosecute conflicts *morally* is of a singular nature with the purpose of the state, which connects to the argument of Adam Smith who, in the *Wealth of Nations* wrote that the first duty of the state was to defend its members. The attitude of Grisez to this matter will be dealt with in the next chapter.

### III

#### The stages in NNL

The *first stage* in Black’s presentation is to set out the foundations for NNL: a theory of knowledge and a defence of free will that places it at the centre of Grisez’s whole approach. He begins this by explaining the difference between NNL and the traditional form of natural law of Aquinas and the post-Council of Trent Scholasticism.

The forms of natural law theory which Grisez describes as ‘scholastic’ are those that direct people in the manner of ‘Here you are – here is your nature – now be what you are’, and which account for morality in terms of conformity or otherwise to some ‘built-in pattern’. While “[s]uch advice can have a true sense...unless human persons have possibilities which are not yet defined, there is no room for them to unfold themselves through intelligent creativity and freedom”. The result, he argues, is that this approach tends to produce a negative and minimalist ethic... (Biggar and Black 2000:2)

Although Grisez regards what he calls “Scholastic natural law” as coming nearest to truth of moral thinking (Grisez 1991:44), it is an approach that fails to reflect the complexity of moral decision making. It does so by offering formulaic responses that

take away individual responsibility (Grisez 1991:6). He likens it as an approach to morality that is comparable to making it an “administrative task” (Grisez 1991:7).

Just like Dworkin who, of course, wrote after Grisez, the foundation for this is provided by a theory of knowledge in which there is a division between those matters that are amenable to empirical enquiry (‘science’) and those knowable through reflection and judgement. This distinction in the Grisez School is expressed as theoretical reason and practical reason. Black explains the former:

The use of *theoretical reason*, Grisez and Finnis argue, *is to pursue knowledge about aspects of reality*. It seeks to establish the truth of a proposition by testing the conformity of its content with some *prior reality*. Theoretical reason can establish the conformity by both deductive and inductive forms of reasoning. The product of such reasoning is theoretical knowledge. (Biggar and Black 2000:3)

This knowledge often takes the form of laws of which those found in science are the best known. In comparison, Black explains that the...

...function of *practical reason* is actually *to bring realities into being*. It is *the form of reason that we use to make choices about what we should do*. (Biggar and Black 2000:4)

While theoretical reason is concerned with understanding what already exists, practical reason is a creative action involving the making of something new through the choices that are made. The concern of practical reason is comprehensive, embracing the whole scope of life, although the example given to illustrate this is a slightly exotic one; “In deciding to become an artist, a person actually acts to bring a new reality into being (i.e., her particular skills of artistic expression).” (Biggar and Black 2000:4). Theoretical and practical reason both connect in the role that the former plays in informing the choices made by the latter (Biggar and Black 2000:4). Practical reason is therefore shaped and generated by theoretical knowledge. Grisez writes:

When I learn something, my knowledge persists and I myself am different to what I was before I knew it; the knowledge, moreover, has an effect on my coming to know more by building upon what I already know. It predisposes me to approach the world from a certain vantage point, to observe things in a certain way, to ask certain kinds of questions. (Grisez 1991:21)

However, the relationship between these two ways of knowing is not a deterministic one unlike, it can be suggested, the position held by those on the other side of the naturalistic fallacy. It is a crucial feature of practical reason that “a person can make choices that are sufficiently free for her to call them her own” (Biggar and Black 2000:4). Black explains that free will is an “architectonic” aspect of the Grisez School and there is no necessary connection between ‘is’ (theoretical reason) and ‘ought’ (practical reason).

In *Fulfillment in Christ*, Grisez sets out his reason for the primacy of free will. He begins with a statement that connects it to human dignity:

Made in the image and likeness of God, human persons are endowed with magnificent powers of understanding and freedom, *so that they can consciously live their own lives.* (Grisez 1991:12 italics added)

However, Grisez concedes that this is a position that is criticised by “conventional educated opinion which rejects the idea that human beings are free.” (Grisez 1991:13) While disciplines such as sociology and psychology provide helpful assistance in deepening human understanding, this is not to concede that determinism is true (Grisez 1991:14). He points out that determinism is logically self-defeating:

In arguing their case, determinists proceed in various ways but must always say in effect, “It is more reasonable to think people do not make free choices than to think they do. Therefore you ought to accept determinism.” Now, this “ought,” spoken or implicit, is an appeal to be loyal to the pursuit of truth; and such loyalty, upon which the determinists urge us to act, is impossible if there are no free choices. One can only do as one “ought” in this matter if one is able to make and keep the commitment – which is a choice – to pursue the truth and be reasonable. Therefore, it is impossible to make an argument for determinism which does not implicitly make an appeal which would be pointless if determinism were true. Hence, every argument for determinism is self-defeating. (Grisez 1991:15)

Free will is the capacity to enable the making of appropriate moral choices that are not simply driven by the symmetry imposed by a connection between ‘is’ and ‘ought’. Grisez and Finnis, together with the third significant member of the School, Joseph Boyle, set this out in their *Practical Principles, Moral Truth, and Ultimate Ends* (1987). Black summarises their approach:

... the way human nature (or any other aspect of reality for that matter) *is*, cannot function to provide a reason why, where choice exists, a person should bring one reality into being and not another. That is, where there is a desire or a necessity to make a choice about which option to pursue, then to make a statement simply about the way the world 'is', does not provide a reason why one option should be chosen rather than another. Put baldly, a fact alone does not provide a reason to act. The inability of theoretical statements to function in this way should be no surprise given that they refer to prior realities and not to bringing future realities into being. (Biggar and Black 2000:5)

The *second stage* in Grisez's scheme is to do with the conception of the good which is at the centre of a person's life. This is what lies at the heart of ethics: living well means behaving well. Grisez explains that through conscience, human beings have the capacity to discern "moral truth – of that which is truly right and good to do." (Grisez 1991:28) A right conscience is something that is acquired, and not a given, formed part of character. It is dependent upon having a correct conception of what is good (Grisez 1991:28). As a Christian, what is good, and thus the personification of natural law, is seen in Jesus Christ (Grisez 1999:77). A good conscience is therefore one that is shaped around the example of Christ. However, more generally, apart from Christian revelation, there is knowledge found elsewhere that indicates what good means.

"Natural" knowledge of a "natural" law of morality is not inconsistent with the fact that there is also such a thing as "revealed" moral truth. In fact, there is an overlap ... For instance, revelation says killing the innocent is wrong, but a person without access to the law of Moses can also know this. (Grisez 1991:76)

For Grisez, what is good is then pursued by a combination of two types which create harmony (Grisez 1991:54). On the one hand, there is reflective good: "existential goods because they fulfil persons insofar as they make free choices" (Grisez 1991:55). On the other, substantive good which are concrete expressions of good. Examples are bodily well-being – "life, health and safety" which are expressed through work and play (Grisez 1991:55).

However, this conception of the good which leads to harmony is one in which there is a pursuit to take place. While conventional natural law posits the good as being accessible directly in the world (the link between 'is' and 'ought'), for Grisez, what is good for human beings is for them to discover by the self-questioning of the formed

conscience. This is in accordance with human nature and therefore a rational process.

How do we discover the worthwhile or fulfilling object(ive)s that we offer as reasons for what we do? To avoid the naturalistic fallacy, the Grisez School formulates this question as an enquiry into our *reasons* rather merely into our object(ive)s. The most straightforward way to discover these reasons is to ask ourselves ‘Why do I do what I do?’, and ‘Why do other people do what they do?’ (Biggar and Black 2000:6)

These questions are not rhetorical. Through processing a sequence of questions that follows from enquiring why people do something - such as the everyday task of why we eat a meal – a set of final responses, that share the attribute of being linked to human thriving, is ultimately reached. No sensible questioner can proceed beyond this.

We could ask the same sort of series of questions about all the activities we (and others) pursue in our daily lives. Finnis, Grisez, and Boyle suggest that, if we do, we would arrive at a list of our ‘most basic’ or ultimate reasons for doing things. They call these ultimate reasons for acting ‘basic human goods’. (Biggar and Black 2000:6)

According to Black, although there is some small variation between its members, Grisez for instance lists eight while, as discussed below, Finnis lists seven, this persistent questioning results in a specific list of basic human goods.

	<b>The General Categories of Basic Human Goods</b>	<b>Dimensions of Human Nature to which these Goods correspond</b>
	<i>Substantive Goods</i> (goods in which people can participate without deliberately pursuing them)	Human beings ...
1	‘life itself - its maintenance and transmission-health and safety	‘as animate ... organic substances’
2	‘knowledge and [a]esthetic experience’	‘as rational beings capable of knowing and experiencing reality’
3	‘[s]ome degree of excellence in work and play’	‘as simultaneously rational and animal’
	<i>Reflexive Goods</i> (goods pursued through choice)	
4	‘[h]armony between and among individuals and groups of persons-living at peace with others, neighbourliness, friendship’.	as ‘agents through deliberation and choice’.

5	harmony between the different dimensions within the self, including one's feelings, emotions, judgements and choices.	
6	Harmony between the dimensions within the self and a person's acts: 'harmony among one's judgements, choices, and performances-peace of conscience and consistency between one's self and its expression'.	
7	'[h]armony with some more-than-human source of meaning and value.	

Table 1. The Basic Human Goods of the Grisez School (Biggar and Black 2000:6)  
(Showing the abbreviations and annotations)

Each of the basic human goods possesses integrity; they each play a role in human thriving in a distinctive manner, and there is no hierarchy of value between them. This does not mean that there are no constraints on what someone may do in the course of his life along the path to fulfilment. Both Grisez and Finnis explain that there are limitations caused by available resources, time and aptitude, which give rise to various principles (see Biggar and Black 2000:15-17).

This identification of human beings as having reasons for the way they conduct their lives is again something found in Dworkin. He suggests that "if we mean to obey the commands of both ethics and morality, we must discover what happiness really is and what the virtues really demand." (Dworkin 2011:16). The conclusion that human beings have a predisposition to live well is thus an end that unites those who in other ways share little in common.

Confirmation of the accuracy so far of this outline of NNL is found in Finnis' *Natural Law and Natural Rights* (1980). The process of relentless questioning of the purpose of human activity is discussed and followed:

What *are* the basic aspects of my well-being? Here each one of us, however extensive his knowledge of the interests of other people and other cultures, is alone with his own intelligent grasp of the indemonstrable (because self-evident) first principles of his own practical reasoning. (Finnis 1980: 85)

Resembling Black's summary contained in the above table, Finnis produces seven basic goods that can be directly mapped onto the list: life, knowledge, play, aesthetic experience, sociability (friendship), practical reasonableness and religion.



While Finnis ascribes fundamental status to these basic goods (Finnis 1980:90), he invites others to reflect for themselves its usefulness.

There is no magic in the number seven ... There is no need for the reader to accept the present list, just as it stands ... Still, it seems to me that those seven purposes are all of the basic purposes of human action, and that any other purpose which you or I might recognize and pursue will turn out to represent, or be constituted of, some aspect(s) of some or all of them. (Finnis 1980:92)

In comparison, Finnis considers Rawls' approach. In particular he fastens on the veil of ignorance to provide both a repudiation of Rawls' scheme but also an occasion for showing the resilience and applicability of the basic goods of NNL. While Finnis shares with Rawls the benefit of belief in a plan for life, his disapproval is based upon the conception of what this plan is as a result of the circumstances of the veil of ignorance. The outcome, he suggests, is somewhat inflexible.

As Rawls says, the first requirement is that we should 'see our life as a whole, the activities of one rational subject spread out in time.' ... but since human life is in fact subject to all manner of unforeseeable contingencies, this effort to 'see' our life as one whole is a rational effort only if it remains on the level of general commitments, and the harmonizing of them. (Finnis 1980:104)

In contrast, in the list of the seven basic forms of human good identified by Finnis, one is practical reasonableness and which plays a key role in the adoption of a "coherent plan of life" (Finnis 1980:103). Although for Finnis there is nothing sacrosanct about his list, he is critical of the smaller number that Rawls produces under his veil of ignorance.

So, in committing oneself to a rational plan of life, and in interacting with other people (with their own plans of life), one must not use Rawls's 'thin theory of the good'. For the sake of a 'democratic' impartiality between different conceptions of human good, Rawls insists that, in selecting principles of justice, one must treat as primary goods only liberty, opportunity, wealth and self-respect, and that one must not attribute intrinsic value to such basic forms of good as truth, or play, or art, or friendship, Rawls gives no satisfactory reason for this radical emaciation of human good, and no satisfactory reason is available: the 'thin theory' is arbitrary. (Finnis 1980:106)

The reduction of human good to this limited outline is the fundamental accusation that Finnis places against Rawls. The root of this error is a lack of consistent equality between different goods. Warnock, for example, achieves this by discussing the role of imagination in moral thinking as leading to correct behaviour. Finnis discusses the

role of religion and the Golden Rule as fulfilling a similar role (Finnis 1980:108). Both of these approaches establish impartiality in a way that Rawls, who it should be remembered, places a great emphasis on the same quality as a characteristic of justice, fails.

And it simply does not follow, from the fact that a principle chosen in the Original Position would be unbiased and fair as between individuals, that a principle which would not be chosen in the Original Position must be unfair or not a proper principle of justice in the real world. For in the real world, as Rawls himself admits, intelligence can discern intrinsic basic values and their contraries. (Finnis 1980:109)

The *third stage* in NNL is the practical stage of identifying what is necessary for human thriving in the form of goals and objectives. While the pursuit of the basic goods provides the content of the good life, it follows that human beings need to work out how they conduct themselves in practical terms, which is often a complex matter (Grisez 1991:77 and 78). Reasonable people will employ practical reason to pursue those patterns of conduct that lead to human benefit. This gives rise to what is known in NNL as the first principle of morality:

In voluntarily acting for human goods and avoiding what is opposed to them, one ought to choose and otherwise will those and only those possibilities whose willing is compatible with a will toward integral human fulfilment. (Biggar and Black 2000:15 and Grisez 1991:80)

What is noteworthy about this is the use of the qualification 'ought' which is not connected in a necessary or symbiotic sense with 'is' as in the naturalistic fallacy. Rather it is a reminder that while a rational person should act to achieve their fulfilment, this is a free decision and not one deterministically driven. Again a more positive parallel can be drawn with Rawls' use of the veil of ignorance which provides a clear lead or, pejoratively, bias toward the choices of good that are made. However this does not mean that the stress and pressure of making difficult moral choices is not also a feature of Grisez's approach. It is not always easy to meet one of the principles that Finnis identifies in the requirement that "one should not choose directly against any basic human good" (Biggar and Black 2000:17). The illustration that Black provides is a military one in which two similar situations, but with significant differences, is examined. He finds that it is morally unacceptable to shorten a war by bombing a city if it will also cause the death of non-combatants. On the other hand, if the same city were to be bombed because a military headquarters

had been located and civilian deaths occurred, then because their deaths were not intended, it would be morally acceptable.

A more formal way of making this point is to say you cannot intend, either as an end or as a means, to harm a basic human good: but you can *within the bounds of fairness* accept a harmful side-effect as a consequence of choosing a good end. (Biggar and Black 2000:19)

Although this sounds similar to the traditional principle of double-effect, it is distinguished by the flexibility or, better, latitude provided for judgement by the degree of fairness that Black introduces. As he comments, there are circumstances that may be tragic but not immoral (Biggar and Black 2000:18). What is also significant about the warfare example is that it shows that matters to do with the well-being of society and not just individual personal conduct, which the discussion has exclusively fastened on so far, are involved. This is important in the context of our central concerns which are of that scale. The Grisez School is capable of considering what makes for the good society. Indeed, this conclusion is given more substance by the final two steps that Black sets out in his exposition of the Grisez School.

The *fourth step* is the turning of moral decisions, such as the boundary of legitimate moral conduct in warfare, into norms of conduct or responsibility. These are general statements that offer a summary for morality. These take two pithy forms; positive norms, such as “‘you should work’ or ‘you should see your children’” (Biggar and Black 2000:19), and negative norms, which will presumably include “do not steal” or “do not murder”. An acquisition of these ways of behaving is essential, as they affect everyday situations which arise in the course of events. This can be illustrated by considering one of examples he provides.

Consider a specific norm. Promise keeping is obligatorily. Most people accept the truth of that. But *why* is it true? To see why, we must keep in mind the first principle of morality – act with a will consistent with love of integral fulfillment. We must consider how the will is related to human goods in *not* keeping promises. We must reflect on how this particular relationship of will to goods looks in the light of the modes of responsibility. Then, based on these steps, we must reach a conclusion: Because the will involved in not keeping promises is inconsistent with fairness to others (after all, *I* want other to keep their promises to me), and because unfairness is ruled out ... breaking promises is morally wrong. Promise keeping is morally obligatory. (Grisez 1991:114)

The importance of promise keeping is indeed something that commands widespread acceptance. However Grisez explains that a degree of discrimination is required in using such norms. There will be clashes in working out what is the right thing to do (Grisez 1991:112). Grisez inadvertently shows this when he considers the issue of contraception. Although the approach he employs is consistent with the attainment of the basic goods, the pro-life conclusion that he reaches is not one that commands the same widespread acceptance that the example of promise keeping does. The good of life is not a matter of procreation, but also of quality. This point does not discredit NNL, but actually endorses its recognition that living morally is complex.

The *fifth step* is the turning of these general norms into actual decisions. Black provides another example when he explains that someone who feels drawn towards a concern for social justice may choose to pursue a career as a lawyer or politician (Biggar and Black 2000:20). More prosaically, in *Fulfillment in Christ*, Grisez sets out how his approach works in situations where moral ambiguity arises. He provides an illustration by discussing the fictional, but not improbable, story of Harold and Jim (Grisez 1991:139). These two gentlemen have shared a jovial evening together and consumed alcohol. Harold should stay overnight at his friend's house until he recovers. However, Jim falls ill with chest pains and, unfortunately, because his home is isolated, there is little or no chance of help reaching him. In these circumstances, would Jim be acting well if he accepted a lift from his intoxicated friend to the hospital? Grisez explains that the right thing to do in such circumstances means referring to the previous stage – where the meaning of responsible living was considered and ways of behaving accordingly were outlined – and then applying it to the situation in question. Grisez argues that Jim would be reasonable in asking his friend to drive him to the hospital if he believes it is a responsible action and he would expect others to do the same.

#### IV

#### NNL and the question of God

Any survey of NNL must consider the position of Christianity: conventional Scholastic philosophy proceeds upon the basis that the universe is rationally ordered in a manner that indicates a presence of the divine. Natural law is the extension and

application of this view into the ordering of the affairs of human beings. That there may be a similar connection at work in NNL is indicated by Grisez's own Catholicism. Black and Biggar use a statement from Bexell:

Grisez's moral theology, as stated principally in the first two volumes of *The Way of the Lord Jesus*, is a largely Thomistic moral doctrine, faithful to the official teaching of the Roman Catholic Church and of normative Christian character. (Biggar and Black 2000:131)

The relationship between NNL and Christianity must therefore be judged strong. This immediately brings it into conflict with Rawlsian ideas concerning rationality and reasonableness. Rawls would argue that NNL, because of its close relationship to Vatican II, is a confessional approach to ethics and therefore not accessible to someone who does not share that outlook. In order to meet this criticism, it is necessary to show that NNL is in reality amenable to rational thought; at least to the extent that Rawls' approach can be considered to have met that standard about which reservations have been indicated earlier. However, to see NNL narrowly as a faith-dependent scheme is not correct. It is because Black regards NNL as a very significant contribution to ethics that he engages with Grisez and his colleagues. He achieves this in a deliberate manner by expressing NNL without its theological connections, at least directly. Black, it follows, does not regard NNL as a confessional ethical system in the way that virtue ethics performs under Stanley Hauerwas (Hauerwas 1983:35).

There is symmetry in these approaches to NNL. For the Catholic Grisez there can be little doubt that in his mind he believes that NNL is a truthful system: he certainly believes it surpasses its Scholastic predecessor (Grisez 1991:10). Equally, Black's interest arises from the same view: NNL is a dynamic restatement of natural law that is fit for the contemporary world. Thus NNL can be regarded as a universal scheme that stands outside, as well as within, a confessional commitment. Added to this it should also be remembered that although Grisez is seen as the pre-eminent figure associated with NNL, there are other significant figures too. There is a measure of plurality of approaches concerning the role of religion.

Evidence that Finnis is cautious about the role of God in ethics can be seen when he explains that the principles of natural law...

...are not inferred from speculative principles. They are not inferred from facts. They are not inferred from metaphysical propositions about human nature, or about the nature of good and evil, or about the function of a human being, nor are they inferred from a teleological conception of nature or any other conception of nature. They are not inferred or derived from anything. They are underived (though not innate). Principles of right and wrong, too, are derived from these first, pre-moral principles of practical reasonableness, and not from any facts, whether metaphysical or otherwise. (Finnis 1980: 33)

Natural law, according to Finnis, is simply intrinsic to the universe. This is significant for two reasons. In the first place, it is a statement about the autonomy of ethics that avoids the naturalistic fallacy and also any notion that it is dependent upon God. This results in the key feature of NNL, that free will is fundamental. Secondly and connectedly, it is also a passage that can be interpreted in humanistic terms: if the norms for human conduct have no transcendent origin, then they must arise purely out of human experience. While Finnis does not explore the process behind this, Dworkin does set out how a person acquires this first stage of morality in humanistic terms.

We all have unstudied moral convictions, almost from the beginning of our lives. These are mainly carried in concepts whose origin and development are issues for anthropologists and intellectual historians. We inherit these concepts from parents and culture and, possibly, to some degree through genetic species disposition. As young children we deploy mainly the idea of fairness, and then we acquire and deploy other, more sophisticated and pointed moral concepts: generosity, kindness, promise keeping, courage, rights, and duties. Sometime later we add political concepts to our moral repertoire: we speak of law, liberty, and democratic ideals. (Dworkin 2011: 101)

This humanistic expression of how human beings gain moral insight is commonly used to suggest that belief in God adds nothing to morality. However a further possibility emerges that allows Christian belief to be creative and authentic. This is apparent if an analogy is made with the autonomy that the naturalistic fallacy gives to ethics. Finnis upholds the independence of morality from a religious foundation by referring to Aquinas' view that the first principles of natural law emerge from experience. Aquinas then continues that the existence of God is only attained by revelation (Finnis 1980:48). If so, this leads to theology having independence as a way of knowing. Just as the naturalistic fallacy grants non-empirical ways of knowing an authenticity and legitimacy that some would deny, so too, it can be argued,

theology has its own authenticity and it is not dependent upon ethics for its legitimacy. Clearly, care is needed here from a theological perspective. Christian theology asserts a connection between revelation and nature which, at the very least, provides the context within which revelation occurs. However the autonomy of ethics, in the sense that it emerges from experience, allows Christianity to claim something of the same independence. It therefore follows that in considering ethics, Christianity is able to demonstrate whether it can add value from its own resources that otherwise would be lacking.

It is this enterprise that Finnis undertakes. Although he supports the autonomy of ethics, he goes on to consider whether the existence of God might add anything to human conduct (see Finnis 1980:372ff). He reflects on the plight of human mortality and the limitations on flourishing that it imposes. He refers, for instance, to the good of friendship which is curtailed by death. He also refers to the issue of self-sacrifice which leads to the benefit of another. Finnis makes the suggestion that the attainment of good for others by self-sacrifice is “weakened” without belief in God (Finnis 1980:373). Indeed, Finnis acknowledges towards the end of his book that the existence of God “...would not only explain, in principle, how self-sacrifice in friendship can make sense; it also would account for our obligation to favour the common good.” (Finnis 1980:406). Finnis, therefore, identifies utility in theological thinking.

Before proceeding further to test whether there is any substance to this argument, he considers whether there are alternatives to the idea that a religious belief adds to morality. He firstly considers the position of someone who conceives of life in atheistic terms. Such a person will rationally seek goals that can be attained within the span of their lifetime. Finnis suggests that this leads to an excessive subjectivism that is not a good thing and indicates that belief in God militates against this (Finnis 1980:373). Secondly, he is also critical of the idea of progress as providing a justification for altruistic behaviour (Finnis 1980:373). He takes the example of someone who by exhibiting self-sacrificial behaviour, believes they are contributing to a future condition which surpasses the present. Associating it as a way of thinking with Kant, he regards it as unsatisfactory because it is highly speculative (Finnis

1980:377). Thirdly, he then considers an alternative approach, which is the Stoic notion that future progress is knowable because it has a kind of existence which can be discerned by observing nature.

[Stoic] teaching is a response to the same 'subjectivity' of human effort. To that anxiety he [the stoic] responds by pointing to the all-embracing order-of-things, intelligible because intelligently ordered; human activity has its objectivity and worth by conforming to the order thus understood, by corresponding, in intention if not in effect, to the intentions of the superintending universal-intelligence. (Finnis 1980: 377)

Ultimately Finnis is dissatisfied with this because it is "an expression of piety" (Finnis 1980:378). If there is no confidence in the ability of human knowledge to interpret nature as having some kind of existence or meaning beyond what can be seen, the Stoic life is meaningless.

It is difficult not to imagine that similar objections may be made against a theist. If the idea of progress is possibly illusory, could the same case not be made against Christianity? However Finnis does not stop at that point. He identifies more precisely what it is that the idea of progress and Stoicism are seeking to explain. He fastens on to the experience known to human beings that unless certain behaviours are followed and others not, a state of chaos will emerge (Finnis 1980:380). This leads him to consider whether there is an order of nature which both Kant and Hume accounted for by some external principle (Finnis 1980:381). However Finnis, as he did when he was introduced, again exhibits caution. He is unwilling to follow even these great thinkers, to this conclusion. For him there are sufficient sources of chaos in the universe that militate against an overarching and guiding influence.

In short, *direct* speculative questions about the significance, implications, or source of the orderliness of things yield, *by themselves*, no clear or certain answers (Finnis 1980:382)

It will be remembered that according to Finnis, the value that a theological perspective gives to ethics, is that it claims to give a reasoned explanation of why human beings display behaviour that is inexplicable, unless there is other than a materialistic understanding of the world. Having considered alternative accounts for such behaviour, he sets out an approach which focuses not on the fact of orderliness, which is present in the idea of progress, but upon its *purpose* (Finnis 1980:382). This is the technique used to identify the basic goods of NNL. Just as the



reason why human beings behave in a certain way leads to thriving, if the purpose behind an action is pursued, what emerges is something that can be considered good and purposeful. Finnis holds that such a meaningful action depends upon a pattern of innumerably precise circumstances (Finnis 1980:384). He goes onto ask what it is that causes these occurrences to occur.

And the only available explanation of the whole causing state of affairs is this: that there is some state of affairs causing that whole causing set of prerequisites or conditions of the first-mentioned state of affairs, but which is not itself included in that causing set of conditions precisely because, unlike all the members of that set, its existing does not require some prerequisite condition (not included in itself) to be satisfied. This newly postulated state of affairs can (and should, given the sense we are giving to 'cause') be called an uncaused causing. (Finnis 1980: 386)

It is the power of this sense of this "uncaused causing" that gives rise in people the willingness to undertake altruistic behaviour that will be of benefit to others, and not themselves.

In summary, behind everything lies something else until an originating set of circumstances exist, beyond which it is not possible to go. This is a traditional understanding of a proof of God. Finnis, however, prefers to discuss the uncaused cause initially as 'D' rather than God. He does this because the notion of an uncaused cause is a more culturally neutral expression in comparison to the term 'God' which inevitably signifies some moral content. Ultimately, however, Finnis partly retreats from this view: in light of the (good) principle of order that emerges, it is reasonable to associate goodness with D.

Neither Plato's nor Aristotle's conception of the divine nature and causality is the same as the notion of D and D's causing expounded in this chapter (or as the Jewish and Christian notion of God and God's creation). But their conceptions certainly have a similarity to the speculative analogue model discussed in this section, and to the confirmation of that speculation by the public divine revelation(s) believed in by Jews and Christians; so much similarity, indeed, that Augustine of Hippo felt obliged to raise the hypotheses that Plato had had some access to the divinely inspired prophets of Israel. In the end, Augustine rather preferred the vague suggestion that Plato's knowledge of the divine nature and causality had been revealed to Plato by God 'through His created works'. (Finnis 1980:393)

One outcome of this for Finnis is some impatience with the conventional distinction made between knowledge of God through nature and by revelation: such theological

categories are 'unsatisfactory' (Finnis 1980:393). It seems that discussion of the role of philosophical theology is something that he is unwilling to undertake beyond this point: his interest has been focussed primarily on establishing the basis for natural law. His theological comments are not his main purpose in *Natural Law and Natural Rights*. That said, what is of interest to him is the claim that religion gives access to true knowledge, the antithesis of the position held by Rawls and Warnock. While his argument that theology furnishes material that furthers ethics from being a materialistic endeavour, he suggests that there may be other ways of knowing God than just rationally. He comments that both Plato and Aristotle "seem to claim a certain experiential access to the divine." (Finnis 1980:394). To a sceptic, this may be a real point of difficulty. However if theology is autonomous in the way philosophy can be said to be, then the intuitions that people have concerning God may not be valueless and capable of rendering real knowledge.

Plato and Aristotle do not use the existence of God or the gods as an argument to justify their claim that there are objective norms of human flourishing and human reasonableness. But their arguments in justifying that claim, and their reflection upon the nature, point, and source of those (and all such) arguments lead them to affirm that there is a transcendent source of being ... and in particular of our capacity and desire to understand being (or nature) and its many forms of good. Thus in realizing one's nature, in flourishing (*eudaimonia*), and ... in recognising the authoritativeness of practical reasonableness, its principles and its requirements, one is responding to the divine pull and recognizing the mastery of God. (Finnis 1980:395)

Therefore what emerges is that Christianity is, for Finnis, the *capstone* of natural law. While Grisez makes this explicit, there is a momentum in New Natural Law that leads it towards Christianity, making it complete and enabling humanity to reach the heights of flourishing. In this context knowledge includes an element of apprehension, something that is part of both the life of faith and human experience in general.

... it should be clear that to ask for an explanation of D (or God) is to miss the sense and reference of claims made about D (or God). (Finnis 1980: 404)

## Criticisms of NNL

The preceding pages in which NNL is outlined arise because of one simple and prosaic observation: it is an ethical theory that *fits* the situation of the Military Covenant *in a way that Rawls' work does not*. When the Military Covenant is considered, it finds a conceptual home in the natural law tradition in the work of Grisez and his colleagues. However NNL is not without its critics. It has been attacked from left, as belonging to a discredited tradition, and from the right, because it departs from, or better perhaps, trims its intellectual credentials.

One critic who attacks NNL as being an outmoded theory is Stephen Pope (2005). His criticism is that natural law theories generally need to *accommodate a modern understanding of psychology*. In a chapter entitled "Reason and Natural Law" (Meilaender and Werpehowski 2005) he provides a general outline of natural law. While doing so, he suggests that its contemporary use can be fundamentally misconceived because there is a gulf between how Aristotle and Aquinas regarded what is natural and how it is understood nowadays. Pope, reasonably, suggests that for the early thinkers associated with the tradition, what was 'natural' was to do with "what is best, most noble, or most excellent in human nature." (Pope 2005:149.) In comparison, for moderns, nature is do what is observed in the world and has a scientific connotation. Certainly while this may be true in a general sense, it is hardly a criticism that applies in the understanding circles of professional philosophy and amongst serious proponents of natural law. It is not a substantial criticism.

A more significant one however is provided by Pope when he fastens on the central principle of natural law and its insistence that human beings should undertake to do what is right *because it is the right thing*. There is a correlation between nature and morality (Pope 2005:150). Consequently, Pope would be unhappy with the emphasis placed in the earlier interpretation of NNL, where the importance of identifying what made for *human flourishing* is located as the ground for ethics. As shown, this is the critical distinction between natural law and NNL. Natural law emphasises duty as the basis for action, captured for Pope in the phrase "do good and avoid evil" (Pope 2005:151), although this expression is also one found in NNL. The approach of NNL,

in comparison, eschews what it regards as the dead hand of duty, and suggests choice and freedom originating in innate human rationality as the ground from which right and good follows. In outlining his scheme, Grisez was specific in defending this distinction. In doing this, it can be argued that NNL gets *behind* the question that, perhaps unfairly in this presentation at least, natural law begs. While ethics is about performance of what is good, it is helpful to know what that appears like. Its connection to human flourishing is important. This is especially true as it releases NNL from a theological epistemology.

The discussion around the fundamentals between natural law and NNL is however somewhat of a sideshow when another criticism produced by Pope is considered. He suggests that the whole natural law project, including NNL, is challenged by the emergence of science and its accompanying outlook. This is to return to the introductory remark, made above, where Pope's distinction between the understanding ancients and moderns have over 'nature' was introduced.

Scientific views of the natural world and our place in it are not particularly comforting. Evolutionists typically depict nature as a heartless, cruel, cold place where all species are eventually eliminated by the relentless, wasteful and bloody process of natural selection. Nature is morally purposeless, so whatever purposes it is given must come from human choices. Since human action is itself the product of the same causal forces that control the rest of nature, the argument runs, we cannot be expected to break free from those forces in a very dramatic way. (Pope 2005:1530)

Although Pope does not make the point, this is ultimately the view of atheists and sceptics, encountered earlier in Warnock and others. A recent rebuttal of this outlook is provided by Shortt (2016). He argues that the grounds for a creator are strong, and offers various arguments. For example, when discussing recent proponents of atheism, he refers to Aristotle and Aquinas (Shortt 2016: 40-57). He writes:

They take us to the heart of the matter, given the dubious bid by atheists to demonstrate that the world emerged spontaneously without the need of a creator, and thus that the existence of something rather than nothing poses no particular conundrum for the non-theist. When Lawrence Krauss uses the term 'nothing' in his discussion, it is productive in each case. If Aquinas is right, however, *potentiality is always the property of something actual*, rather than the other way round. And here we have perhaps the fundamental reason why there cannot be a naturalistic explanation of existence. (Shortt 2016:44)

While this is something of a sideshow, it is important to remember the wider context of this discussion. Two features of NNL which have already been outlined have

relevance here. Firstly, NNL, as shown when the approach of John Finnis was put forward, does not *necessarily* rest upon a theistic framework. Arguably, it may lead in that direction but this is not a strict requirement, according to Finnis. So there is no *a priori* reason for disallowing NNL in the universe that Pope describes. Secondly, and possibly more excitingly, it is important that Dworkin's argument concerning the autonomy of ethics is borne in mind. The risk with the atheistic perspective that Pope uses to develop his point, as we will shortly see, is that if it is taken literally is that it leads to a classic, if extreme, example of the negative effects of natural fallacy type of thinking at work. This is because if the universe is ultimately meaningless, then all our conceptions of aesthetics and ethics are also meaningless: *because* the universe is like that ('is'), then there is a *consequence* ('ought'). However, Dworkin, although himself an atheist, does not hold that conclusion. As shown, he is clear that there are true and objective ethical statements that can be reasonably established as reliable that do not depend upon science. This is the approach of NNL to the naturalistic fallacy and it is a significant part of the theory's view of human beings. While it is indisputable that humanity is part of nature, it is equally clear that we have the ability to manipulate it. We perceive ourselves to be agents and not purely subjects. It is this perception that is key to NNL. As already alluded to, this is actually Pope's conclusion too, and not the grim view above which he deploys as a hyperbolic device. His presentation of a 'cold and meaningless universe' allows him to pursue his argument in which he advocates a blending of natural law with modern insights.

Although this analysis of Pope's own position began earlier with him as a sceptic in regard to natural law, his own position is actually less negative and his criticisms are in order to elucidate his own view. In order to reach that point he continues with a specific criticism of the basic goods that NNL identifies. Pope is critical of what could be summarised as their vagueness (see Pope 2005:156).

The 'new natural law theory' has been subject to significant philosophical criticisms. First, lists of basic goods are notoriously ambiguous - e.g., are all religions, including cults, instantiations of a basic value? Second, it holds that basic goods are incommensurable and cannot be subjected to 'weighting', but it is not clear that one cannot reasonably weight, say, religion as a more important good than play. The claim that basic goods cannot be 'attacked' seems to deny the experience of deep moral conflict between competing goods. (Pope 2005:156)

In reply, it must be borne in mind that basic goods are such because of their relation to human flourishing. It will be noted that their actual number is anyway not fixed, according to Finnis. They are therefore pretty general in their inclusivity. While religion is a good, how *religions* are evaluated is a reasonable matter which will give rise to certain judgements. It is difficult to see how particular and destructive religions undermine the overall religious impulse that NNL is concerned with.

Pope's special criticism of natural law theories, and where he makes his contribution to their coherence, comes about when he considers the importance of psychology.

These natural law theories fail to relate their teleological views of human behaviour - its orientation to the good - to contemporary accounts of humanity or the natural world. This lacuna is due in part to disciplinary specialization, but it will need to be addressed if the natural law tradition is to continue to develop. The natural law tradition generally disagrees with those modern ethical theories that deny the necessity of considering broad metaphysical and anthropological issues. Natural law doctrine roots moral standards - both 'precepts' and 'virtues' - in the human good. Its interpretation of the human good depends in turn on an account of human nature - its powers, potentialities, and inclinations. The question, 'What is the human good?', and helpful reflection on this question in turn depends on how one answers the question, 'What is human nature?' (Pope 2005:160)

Lying behind this statement is Popes concern with evolution, clearly something of importance to him. To be credible, he believes, natural law theories have to be cognisant of the challenge that evolution presents of a purposeless universe which is at odds with the teleological aspect of natural law (Pope 2005:160). He meets his own difficulty by drawing on the 'anthropic principle'. He sketches out a view of evolution that is dependent upon a specifically structured universe that culminates in Homo sapiens, intelligent beings who possess the capacity "to understand its existence as gift, to respond to its Creator with awe, gratitude, and fidelity, and to undertake responsibility for the well-being of those spheres of creation within which it is possible to do so." (Pope 2005:161) Ultimately, therefore, Pope is someone who does view the universe in teleological terms, but in a manner that is congruent with what can be seen in the universe. Indeed towards the end of his examination of natural law, he provides a conclusion which, it can be suggested accords with NNL.

A right way of acting is not ethically obligatory or legitimate simply because it is 'natural', in the scientific sense, as 'evolved' or 'genetically based', but it is obligatory because it accords with what is good for human beings, considered comprehensively. The obligatory character of morality - the 'law' - binds the

person to moral standards that promote the well-being, or flourishing, of the person and his or her community. (Pope 2005:163)

For Pope, the moral way of proceeding must include freedom. This is an outlook that accords with NNL.

A significant critic of NNL because he considers that it departs from natural law and can no longer be considered as part of the tradition is Russel Hittinger. In *A Critique of the New Natural Law Theory*, first published in 1987, he provides "a rigorous analysis and critique" (Miller 1990) of NNL. According to George (1988), Hittinger identifies the work of Grisez and Finnis as "a product of the movement abroad in contemporary moral philosophy to recover a "pre-modern" tradition of ethics." (George 1988:1407) Hittinger's interest arises for three claims that NNL makes. Firstly, it is an approach that evades conventional criticisms of natural law, such as its anchorage to a discredited metaphysical framework. Secondly, it blends the natural law tradition with modern conditions and, thirdly, it connects closely with Roman Catholic doctrine (Hittinger 1989:5). At its core however, Hittinger's concern is with NNL as a "philosophical theory of morality" (George 1988:1408).

The central criticism that Hittinger makes of NNL is its position in regard to the naturalistic fallacy, which, for him, is nothing of the kind. For Hittinger, there must be a link between what is observable in the world and our conduct. In his *A Critique of the New Natural Law Theory*, he writes a summary of his criticism through the example of contraception, a recurring issue amongst these Roman Catholic philosophers. He begins by firstly setting out the point of divergence between natural law and NNL:

Grisez understands his system as departing from conventional natural law theory in one important respect. He argues that his theory does not require a speculative doctrine of nature in order to establish foundational principles. (Hittinger 1989:162)

He then further explains the significance of this:

Grisez and Finnis regard their theory as being a constructive breakthrough in the history of natural law reasoning. In effect they have claimed to generate what could be called "natural categoricals" in such a way as to overcome the limitations of the conventional natural law theory (which stressed the "natural"), the utilitarian tradition (which stressed the goods, but which shortchanged them), and the deontological tradition (which had the categoricals, but an insufficient appreciation of the goods). The project is

ambitious, and is especially interesting inasmuch as they call it a natural law method. (Hittinger 1989:163)

But, for Hittinger, the problem with this is that instead of relying on what is discernible directly in nature, Grisez instead puts his confidence in the human capacity to reason. Hittinger is sceptical of this approach, because ultimately, it cannot sustain itself without recourse to nature. He reveals this by the following comments which set out NNL with a significant illustration of his difficulty.

In the foregoing chapters, however, we have given several reasons to doubt whether this system represents a constructive advance beyond conventional natural law theory. Prior to our examination of the problem of religion, one of the first problems we encountered was Grisez's treatment of the problem of contraception. As we saw, he argues that his position does not require the perverted faculty argument; that is to say, contraception is wrong not because it involves the perversion of a biological function, but because it violates a practical valuation of the function. This practical judgment determines the status of the power of procreation as a good, and thereby as one of the *prima principia* of practical reason. Hence, Grisez concludes that a deliberate suppression of the procreative good entail "volitional absurdity," which is to say the act is practically irrational because practical reason violates itself.

As we pointed out in our earlier discussion of the issue, Grisez's distinction between biological functions and practical objectives is suggestive, *but he is compelled nevertheless to appeal to theoretical data in order to show that the procreative power is a basic good.* (Hittinger 1989:163 *italics added*)

In other words, Grisez finds himself using an observation from nature - a piece of theoretical information - upon which he makes a practical judgement. This may appear to be an argument built around an esoteric and contentious example. However it is Hittinger's belief that in Grisez's case he wants "to have one's cake and eat it too" (Hittinger 1989:164.)

In reply, in his examination of Hittinger's case, George, who is an ally of NNL, comments in defence:

This is a commitment which, as we've already seen, Grisez and Finnis steadfastly decline to make. They reject not only the rather perplexing idea of a normative natural order ... but also the neo-scholastic position that nature is normative in a way that enables us to derive moral norms from speculative knowledge of human nature acquired prior to the achievement of practical knowledge. (George 1988:1408)

The implication of this is that in NNL, because practical reason is autonomous, operates independently of knowledge and understanding provided by fields of study, such as science (George 1988:1409). For Hittinger, this resembles Kantianism:



reason alone provides a guide to conduct through the application of rules (George 1998:1409). However, this comparison is misleading. While the categorical imperative seeks to provide a guide to ethical behaviour that is practical, it differed fundamentally from NNL which is teleological in its nature. Ethical dealings in NNL have a forward leaning aspect that Kantianism lacks.

Hittinger's objections over NNL's position concerning the naturalistic fallacy together with the allegation that it is Kantianism in disguise can, therefore, be withstood. Indeed, the challenge that Hittinger makes concerning the role of theoretical reasoning has the danger of being absurd. As George points out, it is not unreasonable to make some assumptions about practical matters. For example, a basic understanding of the integral organic functioning of the human body (i.e., of being alive) is a condition for any judgement, about the status of life and health as basic goods. (George 1988:1412)

This irreducible hand of nature is not a case of 'turning a blind-eye' in the case of NNL to a difficulty, but rather a given that arises out of what it means to be human. It is difficult to see how Grisez could operate without the everyday knowledge that procreation is an activity integral to being a human person. One must wonder what Hittinger understands a person is! Grisez is entitled to assume certain given characteristics about people. Bodily integrity, and what follows, as a given upon which reflection is possible, is not so esoteric that it needs the kind of over fastidiousness that Hittinger shows here. As George puts it:

Without a basic understanding of the realities one is supposed to be making practical judgements about (e.g., life, friendship, religion), one simply could not judge. In the complete absence of speculative knowledge of what Hittinger calls human organicity, for example, no practical judgement of the intelligibility of life or health as an ultimate reason for action would be possible. (George 1998:1413)

So nothing substantial is here conceded to the traditional approach of natural law. It is simply to acknowledge that it is reasonable to recognise that human beings are creatures that inhabit a world. This conclusion relates to a tendency that is detectable in Hittinger to regard NNL as having its basic goods as essentially 'disembodied' qualities or expressions of human life. It is as if Hittinger, in his criticism of NNL, has a cordon sanitaire in place between the basic goods and life as it is known. This misunderstands the position of the basic goods as "self-evident

truths grasped in non-inferential acts of understanding." (George 1988:1415.) More prosaically, human beings achieve through reflective processes of insight, as Grisez explained above, what the basic goods are. In conclusion to Hittinger's approach a statement from George is summative.

Knowledge that comes as the fruit of practical reflection becomes available to (i.e., provides data for) speculative inquiry (e.g., in metaphysics of theology). On the basis of one's practical grasp of the intelligible ends of human acts, one may derive propositions about the nature of human beings. The point is that in the epistemological mode of inquiry, our (practical) knowledge of human good(s) is methodologically prior to our (speculative) knowledge of human nature. The latter presupposes the former: It is not, as neo-scholastics suppose the other way around (George 1998:1416.)

## VI

Summary: Is NNL capable of contributing to the common good?

This chapter opened by summarising the work that had led to that point. A vital aspect of British army doctrine, the Military Covenant, was incompatible with the highly influential secular humanism of John Rawls, a key thinker whose early ideas, it has been argued, have become embedded in public discourse. This is because the idea of covenant resides deeply within the realm of theology; an enterprise that, for Rawls, depends upon a special sort of knowledge or belief that is not reasonable or rational as it is not accessible equally and openly to everyone. However, rather than be fatal to religion, it was argued that this served to open up Rawls' ideas to criticisms that are, in fact, serious for his approach rather than Christianity.

This chapter then set out to enquire *whether there is available an approach to public policy that is reflective of religious convictions while also responsive to modern conditions: is there an approach that is accessible to all, regardless of world-view?* It is the contention of this chapter that this requirement is met by the ideas of the Grisez school of New Natural Law.

It is clear that Rawls and Grisez begin their enterprises from different perspectives. For Rawls, the issue of what makes for a just society is the main matter. Once the conditions for a fair social order have been met, then individuals can thrive in a way that allows for a fair distribution of various goods. In comparison, NNL begins from the perspective of what is good for a person in a *direct* sense, without an initial sense

of what conception of society is appropriate. For Grisez, the central issue for ethics is the sovereignty and dignity of each person. The emphasis placed upon free will is a solid demonstration of that viewpoint. Grisez is aware that his approach runs contrary to a great deal of modern anthropology in which human beings are viewed as subjects in a deterministic universe. However, determinism, like much else in modern thought, is a portmanteau term that contains different emphases and understandings. In comparison, Grisez presents an approach that begins from the practical experience that persons have of their own worth. Generally, each individual has a clear moral sense. The shared character of this experience leads to the establishment of norms which become expressed as concepts and, thus, open to evaluation and criticism. This is the basis upon society functions.

The Roman Catholic background of Grisez is, of course for many, grounds for disqualification from participation in public policy areas. Like Warnock's disregard of Christians who speak from that perspective in the public space, many would question Grisez's scheme. For that reason, attention to Finnis' approach was given. It was shown that for him, it was not necessary to answer in an affirmative manner the question of God's existence. However, it was also shown that a religious conviction does deepen ethics by providing a dimension that a purely humanistic approach lacks. Belief in God provides a rational basis upon which someone can act sacrificially in a way that a non-believer who acts similarly could be judged to be irrational. It is rational for a believer to act sacrificially or altruistically because they are assured by their faith that this is just and accords with God's purposes. In contrast, a sceptic cannot have any assurance that their comparable good deed is more than a speculative, if hopeful, act in an indifferent universe. Such a deed is irrational.

The ability of NNL to operate in the wider arena of public life than that provided by the church or faith-dependent environment alone is suggested by the inclusion of material from Dworkin. Although he holds a non-religious perspective, his approach is striking in its similarity with Grisez. They both sit on the same side of the naturalistic fallacy. This provides them with their shared view of the basis for the independence and integrity of ethics. In addition, they both take a realistic stance for ethical thinking: there are actions which are intrinsically good and evil.

The contribution of Black is also important in the applicability of NNL. While Finnis' *Natural Law and Natural Rights* is secular in its tone, the same certainly cannot be said of Grisez's work that forms the material for this chapter. Both *The Way of the Lord Jesus* and *Fulfillment in Christ* are confessional in content in that they are designed to enable people to understand and live in a Christian manner. Black's contribution is to open Grisez's approach out to a wider range of readers and thinkers who otherwise would engage with him. Black, it can be argued, recognises that NNL is an approach that is reflective of religious convictions while also responsive to modern conditions.

This conclusion holds against the criticisms of Pope and Hittinger. From their perspectives, the former a relative liberal, the latter, a more traditional adherent of natural law, they are both critical of Grisez's approach. In the case of Pope, his objection that natural law theories generally need to accommodate modern insights provided by the human sciences is reasonable. It is another factor that should be included in its reflections. However this is quite different, of course, from suggesting that NNL is obsolete. One of its attractions is actually its adaptability and flexibility . These qualities make it suitable to respond to emerging ethical challenges by rooting them to a enduring tradition which anchors discussion to the human good. Hittinger's criticisms are of a more technical nature and concern whether NNL is capable of being regarded as a natural law theory because of its reluctance to link morality in a direct way to what is known about the world. He prefers to link it with deontological theories, viewing it as an approach that is understood as resting upon reason and logic. However, it can be argued, Hittinger's approach does not succeed because while there is a clear difference over the naturalistic fallacy, NNL shares much of Aquinas's concerns and aims: how can an ethical system be constructed that leads to what is best for human beings. There is an inclusivity in natural law theories generally that allow them to engage more broadly than certainly the secular liberalism of Rawls' approach is capable.

It follows from this discussion that the Military Covenant may well be best interpreted by NNL, rather than by the social contract tradition to which *TJ* belongs. One of the most interesting features of NNL is the relentless questioning that it embarks upon in order to arrive at its solution. This feature of its methodology and the outcome that

arises, showing that conduct, indeed existence, is ultimately posited upon purpose, is wonderfully challenging not just for behaviour but for every aspect of society, from architecture through to manners. The Military Covenant is something that can be exposed to its scrutiny. However, more significantly, the next chapter will show that it actually finds its philosophical home.

## Chapter Ten Grisez and the Military Covenant

The usefulness of the theory of New Natural Law, associated in particular with Germain Grisez, outlined in the previous chapter, arises in part because it offers an alternative to the scheme proposed by John Rawls in providing an account of how a good society can be organised. In summary, it is a scheme that regards the good of life as the moral absolute. Society and individuals should organise their existence to attain this ideal. It follows therefore that other ethical principles, such as justice (the key theme of Rawls), should be subsidiary to it. From the heights of ethical principles, which reveal a direction to follow, the plains of human activity should be inhabited by decisions that work towards human flourishing. While New Natural Law (NNL) is admirable in setting out an easily understandable goal for life, it is a process that is deeply reflective in character. When difficult moral cases arise and there are conflicts and ambiguities to be taken into account, then in addition to applying systematically the NNL scheme presented in the previous chapter, the tool that Grisez indicates as being particularly helpful is the principle of double effect. In this chapter an account of how this works will be examined, and which will lead to an evaluation of the Military Covenant in the light of NNL. To do so, use will be made of a question formulated from the previous chapter.

*Is it reasonable to derive from the moral right to life all the pragmatic arrangements that follow and which are encapsulated in the components of fighting power; from the 'is' of the right to life can the means of defence, the 'ought', be justified?*

The background to this question is provided by the naturalistic fallacy which breaks the easy relationship between what can be commonly considered to be a fact ('is') and a necessary consequence ('ought'). An example is the case of an obese person who over-eats: in order to live healthily it follows that it is right to eat responsibly. To do so is not only to behave appropriately from the perspective of physical condition; it is also morally right because life is good. As shown in the last chapter, this reasonable position is, at least theoretically, resisted by NNL because it is an infringement of free will. If an action is to be regarded as truly moral, each person must act not out of a sense of necessity, but also out of choice. An obese person

perhaps could argue that they eat in the manner that they do because it is something they enjoy.

When this approach is applied to the topic of defence, the matter may be considered somewhat rhetorical: in real terms the issue is clearly closed as military force is a worldwide phenomenon. Nonetheless, clarifying the moral status of defence is not an unimportant matter given the history of humanity. The naturalistic fallacy raises the question of whether there is any direct and inevitable link between conflict as a concept and its practical pursuit; it could be claimed that the question of the rightness or otherwise of defence is an important and higher matter, and can be distinguished from the way it is carried out. Means and ends should be considered separately. MacIntyre, in his defence of natural law, challenges the naturalistic fallacy by restating the pre-Enlightenment connection between nature and conduct (MacIntyre 2007:56-59). He asserts that for both Aristotle and Aquinas this was a key feature of the teleological nature of the universe. Ends and means are connected in a more direct way than is the case with Grisez's scheme. Following MacIntyre's line of thought, there is a link between the moral legitimacy of conflict and the manner with which it is conducted, which is not the case with NNL where the legitimacy of conflict and the means with which it is carried out each have to be considered. MacIntyre also picks up on the fundamental change that occurred in the eighteenth century concerning how language was employed in moral thinking. There was a rise in functional utility to characterise something as good at the expense of a fuller, more holistic understanding which saw goodness also as being bound up with a morally right life in which the end and the means are bound together. An illustration of this is provided by the relentless technological development in weapon systems which can lead moral thinking in a similar way as occurs in medical ethics where the capacity to carry out more progressive procedures leads to an adjustment in what is considered morally acceptable. The current debate concerning the use of Unmanned Aerial Vehicles ('drones') in conflict is an example and is considered more fully later.

Light is thrown on Grisez's approach to the relationship between defence and the willing of its means by a paper that he wrote in 1970, the decade when he did much of his writing, and which coincides with Rawls' *TJ*. Entitled "Toward A Consistent

Natural-Law Ethics Of Killing”, Grisez begins by setting out that the purpose of his paper is to look beyond utilitarianism and situation ethics which, he alleges, share a common characteristic in limiting the good of life by putting other moral ends in its place (Grisez 1970:64). He wishes to strengthen the position of natural law in the area of state-controlled killing by re-examining the application of the principle of double effect. This paper also illustrates aspects of Grisez’s wider scheme which was set out in the preceding chapter.

This can be seen immediately after Grisez has set out his aim when he delineates between himself and Aquinas, whom he attacks for being inconsistent in his use of “respect for life as a primary principle” (Grisez 1970:65). This criticism is rooted in the first phase of Grisez’s scheme where attention is drawn to an alleged inflexibility in Aquinas’ approach which, Grisez demonstrates in *Toward*, leads Aquinas to create a conflict within his position.

This arises because of Aquinas’ use of justice as a *direct* moral end that is equal in practice to the central role that the preservation of life is meant to play. Grisez holds that Aquinas’ position on justice means that life is not ultimately the fundamental principle that it is claimed to be, as it can be curtailed by the claims of justice (see Grisez 1970:65-66). Aquinas is simply being inconsistent. There is a sense, which is never explicitly stated but indicated perhaps by its proximity in this part of the paper, that, in Grisez’s view, Aquinas is close to relying on a utilitarian argument: justice requires the death of a person in order that the good of society can be pursued (Grisez 1970:68).

The idea that justice has legitimate claims over life enables Aquinas to give to the state the legitimate right to impose capital punishment and to wage war (Grisez 1970:71). In comparison, Grisez states that his position is to adhere to the sanctity of life as an absolute principle (Grisez 1970:65). Each person possesses a ubiquitous quality that any role he or she undertakes can never subsume. Human beings have an irreducible moral worth:

We might grant that the good of a citizen precisely as citizen is subordinate to the common good of society, but the role of citizen is only one dimension of one's whole personality, and the whole person cannot be



rightly viewed as a mere part of the social whole. That is precisely why we reject totalitarianism and maintain that all persons have some fundamental rights that the society may not take away. Religious liberty, for instance, testifies to the conviction that man is not made merely for human society (Grisez 1970:68).

For Grisez, human well-being, which includes the right to life, is always the end: “Each good that is intrinsic to the human person participates in the dignity of the person, a dignity that is beyond calculable price and measurable worth.” (Grisez 1970:69)

However, as a position that meets the requirements of practical living, this clearly needs some attention. As shown, Aquinas achieves this by allowing the good of life to be buttressed by the quality of justice. Although life is important there are circumstances when the interests of justice need to be fulfilled in order to maintain this principle. Explicitly there are situations under which life can be forfeited.

In comparison, Grisez heightens the value of life. As a result he creates a problem as to how evil is to be resolved. If Grisez is critical of the significance that Aquinas ascribes to justice, believing it to be a rival to the good of life in practice, he needs to provide an account of how evil is to be dealt with if his system is to be robust. The way he does this is to fasten on to a solution used in natural law to assist in the resolution of difficult moral dilemmas.

Although natural-law theories have generally assumed respect for life as a primary principle, there also has been a tradition of qualification or limitation of the general principle. Two types of qualification or limitation are most common. First, the lives of those who attack the common good are not always considered inviolable; thus there have been theories of justifiable capital punishment and of just war. Second, actions which have a deadly effect but which are primarily directed toward some other good purpose have sometimes been considered justifiable; thus killing in self-defense and indirect abortion have been justified. (Grisez 1970:65)

Grisez adopts the second qualification, the principle of double effect (Grisez 1970: 87). He believes that the integrity of the principle of life can be balanced by applying this approach, which is used in the resolution of hard cases, with medical issues being the obvious example, to more general areas where the principle of justice operates. By employing double effect there is an alternative to relying on the

principle of justice which operates in a way that may lead it to compromise the good of life by legitimising the direct taking of life.

In *Toward* Grisez is not narrowly focussed on the ethics of conflict so much as the state's role in killing generally. However, it is a topic that lends itself to consideration of his views. The circumstances under which war can legitimately be waged, for instance, vary significantly between a position that grants justice a role, Aquinas' position, and one in which the good of life is to be preserved as the *fundamental* value, the position of Grisez. The implications of this distinction are striking. Situations arise which might call for justice involving the waging of war, which are at odds with the principle of the preservation of life. The decision of the United Kingdom and France to declare war upon Germany in 1939 following the invasion of Poland, might be regarded as an example of the pursuit of justice being considered higher than the risk to life. Certainly the decision of the UK to retake the Falklands after their capture by Argentina is an example of where justice overcame concern about casualties. In these two cases it could be said that there was no initial direct threat to either the UK or France in the case of the Second World War or, more clearly, to the UK in the second example. In comparison, the conflict in Afghanistan which followed the attack upon the United States in 2001, when thousands were killed, was justified as a counter to a threat of further loss of life given Al Qaeda's intention to carry out similar attacks from the firm base it had established in that country.

Grisez's position becomes clearer when his approach to war is examined. His initial position is summed up in his own words.

Once we strip away from the state the pretension of *suprapersonal* value, I do not see how warfare can be justified except on analogy with killing in individual self-defense. (Grisez 1970: 72)

This comment reveals that there is a fundamental division between Grisez and every other thinker considered so far over the importance of the state. The significance of Adam Smith's justification of the state is that it has become normative in the liberal tradition: in contrast, Grisez's view of the state is unclear other than it does not have the right to legitimately kill on behalf of the nation, in his view. Insofar as a position for Grisez over the phenomenon of the state can be judged, it would appear that, given the high value he ascribes to the individual, each person possesses what

amounts to sovereignty which the state cannot impinge upon. This is a radical application of the Catholic social doctrine of subsidiarity. Further comment is made below.

While the above statement imposes a limitation upon the state in respect of killing, it does indicate the grounds upon which Grisez allows killing: it is only permissible as an act of self-defence. This, he considers, is moral, as every person has a responsibility for his or her own well-being. Apart from that, all killing would be homicidal (Grisez 1970:75). Killing under such circumstances is mitigated because it can be linked to the principle of double effect and so upholds consistency around the principle of the deepest human good of life.

However, if one intends not the death of another but only the safety of his own life, then one need not identify himself as a killer. One's attitude toward human life itself and toward everything related to it can remain that of a person unwilling to take human life. (Grisez 1970:76)

This consistency, to return to the issue of practicality, has to deal with a number of considerations if it is to be useful. One of the most striking of these is whether it is permissible to *prepare* to act in a way that will result in death? Grisez answers affirmatively.

So long as aggression is not the prime motive driving action, then there is nothing morally inconsistent in placing oneself in a position where self-defence is possible. Willing the means of defence is not an aggressive act but a prudent one. (Grisez 1970:77)

Another is the question of whether it is possible to act pre-emptively while avoiding the accusation of acting aggressively. While Grisez does not deal directly with this, the answer emerges from the following statement:

Ethically ... one defending himself with a proportionate response that will in fact be deadly need not turn against life, need not regard death (even the attacker's) as if it were any sort of good. In this sense one who kills in self-defense need not in-tend (tend toward) the attacker's death. (Grisez 1970:78)

There is nothing in this statement that does not permit pre-emption in circumstances where an assault is anticipated: a "proportionate response" might, prudently, mean an act of pre-emption. That being so, as long as the deliberate death of another is not the intention, it can reasonably be regarded as legitimate to act to prevent such an attack.

Self-defence and pre-emption combine to produce deterrence. This is an illustration of how moral debate develops: decisions concerning other matters (self-defence and pre-emption) result in a further effect (deterrence). Such an outcome is not necessarily intended, although their emergence might not be considered an undesired one. In this case the form of deterrence that emerges can be regarded as a passive form, and one that can be differentiated from what might be termed as positive deterrence. It is difficult to see how Grisez could have a problem with this negative form of deterrence, emerging as it does out of a defensive background (Grisez 1970: 93).

While this conclusion is reasonable, care needs to be taken when considering positive forms of deterrence. In *Toward* Grisez repudiates what is widely regarded as the most obvious form, the policy of nuclear deterrence (Grisez 1970:93). His objection emerges from the unacceptable *use* of such weapons which makes their *existence* immoral.

As I understand the deterrent strategy, the last stage would have no military function at the time it would be done. Yet only the definite intention to act at the last (countervalue) stage can make the threat effective. The deterrent thus involves the choice of an evil as a means to a good—the good realized in another act, the enemy's present choice not to attack. The destruction of life at the countervalue stage thus cannot lie outside the scope of intention. (Grisez 1970:92)

His position is therefore a complex one. He allows for the morality of conflict providing it is undertaken only for defensive reasons and permits the means of such defence to be developed. On the other hand this limited consent is not unconditional, and there is a balance between supporting conventional practices and rejecting nuclear deterrence.

Despite his allowance of self-defence, the overall view that emerges from *Toward* is that Grisez had a fundamental attitude of non-aggression, and he was content to allow that to lead where it will. His contemplation of nuclear weapons led him to view them as something intrinsically evil regardless of their role in deterrence. One of the differences between the 1970s and the present is the end of the Cold War, which has led to a significant re-evaluation of the Westphalian principle of non-interventionism, for example by Reed and Ryall (2007). As to whether this means that Grisez holds

any significantly different attitude to conflict in contemporary circumstances seems, on reflection of the ideas contained in *Toward*, unlikely.

While, therefore, Grisez's views must not be misinterpreted and used in a way that abuses his severe misapprehensions of conflict, the position he holds on defence is nevertheless a nuanced and robust one. He is clear that an act of aggression is immoral and damages the perpetrator. At the same time those who are attacked, so long as they maintain a defensive posture, are legitimately entitled to meet force with resilience so long as it is clear that the intentional killing of an unjust assailant is not intended (Grisez 1970:79). They are also entitled to prepare for such an eventuality. This position is consistent with mainstream Christianity although it is not compatible with the views of pacifists.

Near the end of *Toward*, Grisez's views on defence are made clear by a number of largely practical illustrations. War, as already extensively shown, is only justifiable when it is a form of "community self-defense" (Grisez 1970: 91). This expression, in the light of the slightly earlier discussion of what was detected as an ambivalent attitude towards the state, is an intriguing phrase. It gives rise to a sense that while defence could be a state function, since the state may be coterminous with community, this might not always be so. Additional interpretations of community abound; from geographical entities through to ethnic as well as political, religious or cultural identities. This may be a loosely phrased comment. Even so, the ambiguity of the term is concerning. Without the application of the full suite of criteria of Just War theory which balances it, such looseness could lead to illegitimate behaviour. Leaving this speculative comment on one side, the waging of a defensive war in which the killing of an enemy is a regrettable consequence is, ethically, a sound position. Such death is an undesirable side-effect of a good end. This reflects closely the earlier account of Grisez's mature thought in *RNL* where double effect is a key concept.

Grisez continues by accepting that in order to counter threat it is acceptable to prepare to do so, but this must not degenerate into a situation where military means become a significant aspect of society's wider life. The military tail must not wag the

civil dog. He goes on to express some further practical limitations. War must be proportionate and not prosecuted to the ultimate end of unconditional surrender. It is also unacceptable to attack non-combatants or to engage in practices such as torture (Grisez 1970:91). Grisez is not unaware of the impact these rigours will have.

If criteria such as these are applied to World War II, the conclusion must be that if the United States' role in the war could be justified, still it certainly was not conducted in an altogether justifiable manner. The demand for unconditional surrender and the use of strategic bombing were certainly indefensible. On the other hand, measured force might have been justifiable had it been used merely to impede and destroy the force unjustly employed by the Axis powers.

The Vietnam war is much more questionable from an ethical viewpoint. Are the enemy forces really acting unjustly, or have they provocation? Are allied objectives as limited as we claim, or are we not more interested in preventing future consequences (the "domino" theory) than in repelling present force? Is the war a necessary and an effective means to the immediate purpose? Are U.S. forces limiting their attack to legitimate military objectives, or are they trying to gain indirect military advantages by all sorts of acts that in themselves do not lessen enemy power—acts of terror, torture, reprisal, execution of civilian suspects, bombing of non-military targets, and so forth?

The facts are not easy to assess, but it is difficult to avoid the impression that the objective of the U.S. is not so much the destruction of enemy power as it is the gaining of a better negotiating position. If means proportionate to the latter purpose necessarily include some that are not directly effective toward any strictly military objective, then the killing and other destruction involved in the war are a chosen means to an ulterior end. Here the evil has entered the scope of intention. (Grisez 1970:92)

It is interesting that Grisez, like Rawls, rejected the Vietnam War as an immoral enterprise. Clearly, their opposition is an indication of the strength and breadth of the opposition that existed to that conflict. Both were writing as contemporaries of that particular confrontation and it is testament to their moral courage that they took such a stand as public philosophers. Grisez's rejection of US policy with regard to Vietnam is an expression of his opposition to a political culture comfortable with military power.

As indicated in the previous chapter, Grisez offers an impressive and comprehensive system. It places at the centre human beings and the role they have in determining the condition of the world around them. From the reasonable and realistic notion of human behaviour being driven by a desire to live well, it offers an elevated view of people as being the determiners of the condition of society. If the nature of human

beings is to seek good, the character of that goodness is something that can be debated, constructed and command widespread public acceptance.

Although this is a positive assessment, Grisez's views on military matters, including war, are not always necessarily sound. This conclusion arises out of the practical examples of conflict referred to earlier. Given the role that the principle of the good of life plays for Grisez, it was suggested that the declaration of war by allies against Nazi Germany after the invasion of Poland was problematic. This is supported by the comments set out immediately above where he considers the role of the USA in that war. He expresses some ambivalence, stating a preference for the use of tactics that were intended to impede enemy action over what he considers to be the questionable pursuit of unconditional defeat. This arises if, as Grisez insists it must be, the pursuit of justice is set on one side and which leads to death as an intended act.

The outcome that emerges with respect to Grisez is that his understanding of peace and justice is rather limited. It is not clear whether, in the interests of humanitarianism, there is any justification for undertaking even limited military operations to prevent physical oppression. Continuing with the example of the Second World War, it is not clear whether without the attack on America at Pearl Harbor by Japan, an Axis power, America would have fought against Germany. Given the nature of German aggression and policies towards significant groups such as the Jews, any toleration of such a regime as Grisez can be fairly interpreted as implying, is outrageous. While he is not a pacifist, the grounds for fighting in a conflict are circumscribed.

This position appears difficult. It is certainly not a policy that has been adhered to in the case of the UK which saw a number of episodes that have become known, largely pejoratively, as 'Blair's Wars' (Kampfner 2004). However, certainly prior to WWII but also a feature of US attitude to the Balkan conflicts of the 1990s, there is a tradition found in the United States of isolationism that had an impact during the twentieth century. With this in mind, Grisez's view perhaps needs to be understood in its context.

Despite that challenge, what Grisez and NNL do achieve is to provide a substantial reminder of the cost of war which the Christian faith heightens (see Biggar 1998). This leads to a deepening of the conventional and reasonable reluctance to enter conflict. War and associated forms of conflict are to be understood fully as the last resort and only therefore to be undertaken after the most grievous cause has been committed and only once all other avenues of undoing the wrong have been exhausted. While this statement is clear, it is also nonetheless apparent that the role of justice is not one that can be subjected so completely to the principle of the good of life as Grisez argues. The hard separation between the good of life and the good of justice is a weakness in Grisez's scheme and can only be accounted for if his conception of good is in some sense emaciated. Given the full richness of the good of life discussed in the previous chapter it seems inconsistent if it is not accompanied by an understanding that, if life is to flourish, the general conditions of justice must exist. It follows that if justice is diminished then the quality of life is diminished. If so, then such encroachment rightly ought to be resisted. In other words, any reduction in the good of life is an expression of injustice. Through this connection, the gap between Aquinas and Grisez may not be as great as Grisez expresses it. This is discussed further below.

The heightening of the avoidance of conflict alongside the technical features of NNL have an impact when difficult issues concerning innovation in conflict are considered. An example which illustrates this is provided by the introduction of Unmanned Aerial Vehicles (UAVs) into the battle-space. Ethics often appears to deal uncomfortably with innovation. When a technological advance occurs, it is usually accompanied by a claim that an improvement in the human lot has taken place, with some previous ill or lack of capacity overcome. This is a manifestation of the Enlightenment idea of progress that is characteristic of the intellectual and wider cultural tradition that has been dominant in recent centuries. Ethical considerations appear to be given little significance and the usefulness of the innovation taken for granted. The outcome, and not the means, is paramount and dominates. Chapter Eight touched on this issue in relation to medical techniques, but a similar discussion applies with regard to the ethical implications of technological developments in military equipment.



UAVs, also known as drones, are presently being used widely in Pakistan and Afghanistan, and their use is subject to a great deal of debate. UAVs possess a number of military advantages. They allow extended reconnaissance patrols to be carried out, buttressed by an effective capacity to deliver accurately targeted ordnance against a target. UAVs are associated with the assassination of alleged Taliban and Al Qaeda personnel. Significantly, as UAVs have no pilot, they carry no risk to any crew. These abilities mean that UAVs can be considered a novel development.

The discussion surrounding UAVs is largely being conducted in the public media. An example is a letter sent to *The Times* newspaper in December 2012 (*'Change policy on drone attacks'* Letter to the editor of *The Times* newspaper dated 7 December 2012). In this letter a group of British academics argue that "...drone strikes are in violation of international law because there is no state of war with the communities involved and insufficient care has been taken to ensure that there is no negligent harm to civilians, their services and amenities". This observation applies principally to Pakistani airspace as the deployment of UAVs in Afghanistan is permitted by the agreement between the government of Afghanistan and the Coalition Forces currently in the country. Their specific use, however, like any weapon, remains a matter for scrutiny.

In Chapter Eight the relationship between ethics and law was discussed. It emerged that both have their own area of competence and can operate independently. It was also shown that while law is dependent upon morality to be legitimate, it is possible in practice for the existence of law that may be immoral. It is equally possible for an action to be moral which is not legal. Therefore, while the use of UAVs in Afghanistan is legal, their use in Pakistani airspace *may* not be, for the reason given by the authors of *The Times* letter. However, their use is not necessarily immoral. This argument is compatible with the experience of the kind of asymmetrical warfare discussed in Rupert Smith's *The Utility of Force* (2006:377-383). The essence of Smith's argument is that military force should establish and abide by the primacy of law. Yet in some situations, under the conditions of contemporary conflicts, non-state combatants seek geo-political locations where they can operate. North-west

Pakistan, known as the tribal-areas or frontier region, is an expanse of land that is characterised by the absence of law as conventionally observed. In the face of such a reality, what is to be done? Smith gives an indication of the answer as someone who was involved as a commander in a parallel situation in the Balkans (Smith 2006:381), in which there was ambiguity over the legality of that conflict.

For example, in early 1999, we awaited the decision as to whether or not NATO was to bomb Serbia and Serbian forces in order to coerce Milosevic into withdrawing his forces from Kosovo, a province of Serbia, where they were oppressing the Kosovars. This was done without the licence of a UN Security Council resolution, and I was in some doubt as to the legitimacy of our intended actions ... I reflected deeply on the matter and finally decided it was legitimate simply on the grounds that if I, a strong, fit man, was walking down the road and saw and heard in a house evidence that a violent crime was in process it would be my duty to break in and stop it, using sufficient force to do so. (Smith 2006:381)

This statement of the primacy of morality is immediately supported by the next statement where Smith comments upon sources that aided him in his deliberation.

And then we have the laws of the states that send the servicemen to the theatre and the law of the state or states that comprise the theatre. In one way or another these bodies of law will govern the use of armed force; usually it is permitted in self-defence and to create order when disorder is threatening life and property. In both cases the use of force will be governed by the concept of a demonstrable and imminent threat and proportionality in response. (Smith 2006:381-82)

In certain circumstances, when specific law is absent, Smith is willing to rely upon moral precepts to act which underlie law and with which he can make comparisons. This fits the use of UAVs. In the case of drone attacks in Pakistan, these grounds are provided by the nature of the conflict – there is no realistic likelihood of the state of Pakistan being able to establish more than a nominal degree of sovereignty in the region - and the right to self-defence. Crucially, the use of UAVs is not arbitrary but based upon the analysis of intelligence and subject to legal scrutiny by American and British law.

Given the highly cautious attitude of Grisez towards conflict, whether this conclusion is one that he would share is difficult to estimate. There are aspects of the strategic and operational capabilities of UAVs that might be considered acceptable. The relative precision of their armament allows discrimination in their application; collateral damage and injuries can be kept to a minimum. Yet, on the other hand, this

same point might also be considered their weakness. Their capacity to be limited to a specific target could lead to a low threshold in target-selection, despite consideration being given beforehand to the legal and ethical aspects of their use.

The principle of double effect that is used by Grisez to make the distinction between self-defence and the positive act of killing, is useful in considering the use of UAVs. It will be remembered from earlier that Grisez only permits self-defence even if he is reasonably liberal in how he allows this to be delivered. The key to understanding his position is that he is wholly opposed to the aggressive use of arms. As Coleman (2013) shows, the precise ethical difference between the aggressive and defensive use of a weapon can be considered through examples of which UAVs are a good illustration. Earlier, it was explained that the principal use of UAVs, at least of this present, technologically early, generation of drones, is mainly one of reconnaissance. As a weapon system, although they are clearly effective, they are relatively small in payload terms. These characteristics might therefore led them to be regarded as suitable for the kind of defensive use that Grisez favours.

However, this approach of applying double effect to a particular weapon system, is in reality less useful than it appears. It can be argued that UAVs should be regarded as highly aggressive: they lower the threshold of violence by placing hitherto non-combatants at greater risk than they were previously. UAVs allow the penetration of hostile territory and, in the course of destroying enemy personnel and locations, despite the best intentions, harming those caught up as collateral victims.

As a result, it is clear that in ascribing 'virtue' to any weapon is mistaken. The use of UAVs is not somehow morally better than, say, the use of Special Forces or a missile delivered from an aircraft. It is, in general, the ethical command and control of weapons that is most important.

The pilotless nature of UAVs which divorces the attacker from direct personal exposure to the battlefield is arguably more apparent than real. While it almost seems unfair that a pilot can fire a weapon from many thousands of miles away from where it will impact, this is only the latest manifestation of the advantage that

technological developments provide to combatants in every generation over their foe. The use of UAVs is not different in any fundamental sense; it is simply the latest manifestation of the tendency human beings have to devise ingenious means of killing. What truly matters is the moral and legal framework in which these weapons are used.

It is in connection with this that Toner has a significant contribution to make that complements the approach of NNL. In *Morals under the Gun* (Toner 2005) he writes as an academic who teaches ethics to US servicemen. He expresses the view that soldiers face what he terms as “ultimate conflict situations” (Toner 2005:152) when there are “duelling duties” (Toner 2005:155). These are occasions of considerable moral pressure when military personnel face tremendous dilemmas as to what they should do. In such extreme circumstances Toner argues it is virtue expressed in good character in the form of the “moral militarist” (Toner 2005:153) that is the final guarantee of right conduct. The alternative is to operate immorally (Toner 2005:155). There is an echo here of the sort of virtuous person that Warnock identifies.

In this discussion about UAVs the critique provided by NNL is powerful. Its major insight is that it establishes the heightened value of life as a simple concept for evaluating military activity. The tremendous damage of war is universally acknowledged. Despite this, the ability of humanity to live peaceably is demonstrably impossible. While this may be argued to show the futility of endeavours to establish peace, it would be a total dereliction of the finer aspects of human nature to succumb to this situation. In placing the good of life at the centre of human reflection and activity, Grisez is acting entirely consistently with the best in human nature, which is what he claims his system reflects. Although he is not a pacifist, in *Toward* he writes with deep scepticism about the military and all that is associated with it, including, it is safe to assume, UAVs.

The allowance that Grisez makes for self-defence prevents him from thoroughgoing pacifism. For some, this may be an indication of a flaw in NNL. This is because, if the aspiration human beings have toward living well is their fundamental characteristic, how does it account for conflict? NNL, it could be accused, is revealed

to be an approach that is unable to cope with the realities of the world. However,>NNL contains realism and robustness. A world without conflict is of course desirable, but present geo-political factors make that unattainable. Instead, self-defence, paradoxically, is a practical strengthening of the principle of the good of life, and shows that the good life is not the same as a utopian ideal. It is the translation of aspiration into a reasonable policy. This is why Grisez is consistent in permitting the undertaking of preparation to defend against belligerence. Therefore, although UAVs are certainly not something to be celebrated, they are compatible with a defensive posture in conflict so long as the correct moral understanding is in place.

While Toner's approach to dealing with critical situations is helpful, Grisez advocates an alternative approach that sits better when it comes to matters of policy. The principle of double effect, when introduced to conflict situations, also has a useful effect. It acts as a practical test for the strategic policy and tactical means that can be used. Earlier, it was observed that the availability of new weapon systems and technological innovation generally often appear to lead ethical discussion in a way that appears to render it flat-footed. Simply by being available, technology changes the possibilities that can be undertaken. Double effect serves as a bulwark against such a process by challenging the purpose of what the military can undertake. By insisting on a defensive use of the means available, Grisez has placed an effective barrier against adventurism and other questionable use of military means. This caution should not, however, be misinterpreted. Once the decision has been made to apply lethal force the consequences, foreseen although not desired, must be accepted. Once forces are committed, then the objective of defeating the enemy may well entail moderated ruthlessness.

Although the analysis given by Grisez in *Toward* is helpful, there are two criticisms that can be made. The first concerns the role of justice. Grisez's position on this is something explored earlier, particularly in comparison to Aquinas. Whether Grisez's view is sustainable deserves examination. In *Toward* he sets out the position that defensive measures are morally legitimate because life, which is the highest good, is threatened. Each person, and by extension the state, has a duty to preserve life. Whether this is the same as justifying such action because it is just, is not obviously

apparent. It has already been argued that Grisez does not recognise the legitimacy of war undertaken in response to an enemy who has acted unjustly but only because life is threatened. Grisez's position on indirect threat to life, such as the deprivation of land and vital resources needed for life, is not discussed. While the placement of the good of life at the centre of Grisez's system is a positive feature, the exclusion of a role for justice brings into question the precise meaning of life. More accurately it can be questioned whether Grisez's appreciation of life is limited. Human thriving depends upon a complexity of factors. In fairness the previous chapter provides evidence that shows Grisez's appreciation of this. However, this involves an issue of balance, and the question arises as to whether he allows sufficient weight to what constitutes the good life. Life is not simply about existence and the avoidance of annihilation, but also about circumstances that give rise to pleasure. The difficulty with NNL is how this understanding that a meaningful life includes culture (however broadly that is understood) is to be maintained, when life itself is not directly threatened with being extinguished. If a full, well-balanced and attractive life includes liberty, the question arises as to what action is morally appropriate for its maintenance. This is only a restatement of the debate that occurs within society and the church over the boundaries of what constitutes a reasonable means of defence. The position of Hauerwas as a Christian pacifist (see Hauerwas 1983:72ff) represents one edge of this debate, while those who advocate the first-use of nuclear weapons perhaps occupy the opposing side. Nonetheless, the preceding discussion does indicate that the exclusion of justice as a reasonable basis for armed conflict is questionable. The testimony of Rupert Smith is indicative of this.

A second criticism, while acknowledging the awfulness of war, is to suggest that NNL does imply a rather anodyne understanding of human character. Justice is not simply an imperative that has philosophical roots, but it is also something that emerges from the spirit. Human beings have an instinctive recognition of injustice and need to make a response. Following the invasion of Kuwait by Iraq in 1990, Robert Runcie, then Archbishop of Canterbury, spoke about it in a manner that extends beyond Christianity in the lead-up to British involvement in the liberation of Kuwait.

Christians have a built-in resistance to the use of force. We are given only one mandate. We are to be peace-makers. But the Bible insists that we

live in a world in rebellion against its own best interests, a world which has rejected the order given to it by its creator. Christianity does not lack realism about the intransigence of conflict. The Scriptures speak of our responsibility for seeking justice and the well-being of creation in the world as it exists. The hard fact is that the use of force is caused as much by human virtues – our sense of justice; our belief in the difference between right and wrong; our readiness for self-sacrifice on behalf of others – as it is by any of our failures. (Reed 2004: 75)

Just as in the conclusion to the discussion about the complexity of what constitutes the good life, this is another area in which a variety of views are possible. The reluctance to enter a conflict, culminating in the pacifist position, does not imply physical or moral cowardice: many conscientious objectors to war experience considerable disadvantage due to the belief they have in their cause. Yet experience does suggest that Runcie's comments contain a valuable insight.

A more technical evaluation of NNL that relates to this discussion about the theory's application to defence is provided by Jean Porter. Essentially she shares in Pope's criticism, considered in the previous chapter, that it is an outmoded approach. In her article "'Direct' and 'Indirect' in Grisez's Moral Theory" (1996), she sets out a view that argues that NNL is insufficiently flexible to deal with moral complexity. She does this by focusing upon Grisez's use of double effect. In her article she considers difficult cases involving decisions around killing and constructs specific scenarios. As she proceeds through various situations and draws upon statements from Grisez to make her case, the impression that arises is that Porter is rather literal in how she dispenses Grisez's scheme. While a forensic examination of the coherence of NNL is entirely appropriate, the sense that character and judgement have a place in difficult decision making is lacking: it all seems rather technical and mechanistic. This conclusion emerges from Porter's discussion of the killing that arises in euthanasia and a woman who kills her attacker in self-defence when being raped (Porter 1996:625). For Porter the circumstances of each are insufficient to make a distinction as the intent is the same. She seeks to show that the end, killing, makes them similar. However this fails to distinguish that there are, actually, significant moral differences between them that make the actual task of killing problematic, especially in the case of euthanasia. The entitlement, if necessary, to kill in a situation of personal self-defence, such as a woman facing rape, is significantly easier to justify

than euthanasia. The conclusion that arises is that Porter's attempt to show that NNL is actually unreasonable in its outcomes is less successful than she believes. This outcome is reminiscent of the criticism that Bradley and George make of Porter in their review of another piece of Porter's work that considers NNL. They conclude that her "Basic Goods and the Human Good in Recent Catholic Moral Theology" (1993) lacks genuine analytical power.

With so many confusions in the presentation of NNLT [New Natural Law Theory], it is no wonder that what Porter apparently intends as the decisive refutations - a series of illustrations - are well off the mark. The botched job on "no essential difference" between homicide and contraception is one example. (Bradley and George 1994:313.)

So, it emerges, the weight placed upon double effect is something that withstands criticism. NNL is realistic in being able to operate in a discriminating manner in genuinely complex moral situations. This conclusion applies if the focus is returned to the Military Covenant. The positioning of NNL, in terms of armed conflict, is midway between the approach of Hauerwas and that of mainstream natural law. For Grisez, armed conflict is to be avoided, even to the extent of injustice being allowed to be done. However, the allowance of resistance on the grounds of self-defence and, crucially, the preparation for it that Grisez allows, is crucial to the way the Military Covenant is evaluated. This is because if, as has been argued towards the beginning of this work, the Military Covenant is to be understood as an aspect of the Moral Component of fighting power, it is a development that makes a contribution to the realm of conflict. While the manner of this role is clearly different from that played by a weapon system, such as UAVs, it is open to the same critical evaluation.

The contribution that the Military Covenant makes to the armed forces is to provide a stable base from which they can operate with a heightened efficiency in comparison to what may be possible without it. Both as a contribution during an actual crisis and in training and preparation for such eventualities, then according to NNL, the Military Covenant is an appropriate development.

However, this outcome is not an automatic one. Grisez is considerably more subtle. If the Military Covenant is simply justified as a vital contribution, through the moral component, of defending life on the basis of natural law, Grisez will object that this is



to fall subject to the naturalistic fallacy. Allowing for the probity of self-defence it is nonetheless erroneous to believe that certain consequences inevitably follow for how this is achieved. For Grisez, the organisation of defence is a matter of human autonomy expressed in the form of free will. Defence is a matter of judgement. This is a refreshing way of understanding the Military Covenant and, indeed, other artefacts used in defence. While the concepts that form the Military Covenant may well have been implicit in earlier generations, it is only in recent years that it has been formulated. From Grisez's point of view, this is entirely legitimate, and reflects how judgements can be expressed in the matter of how society chooses to organise in the light of its prime moral goal, the enjoyment of life.

This means that, in answer to the question posed at the beginning of this chapter, concerning steps that are morally justifiable in the cause of defence, it can clearly be shown that so long as the good of life is central to moral thinking, and killing is not the prime intention in an act of self-defence, then, as an act of free creative thinking rather than the outcome of some pre-determined process (the naturalistic fallacy), the Military Covenant is a legitimate aspect of the moral component of fighting power.

This view is supported with a further observation. When the approach of John Finnis was discussed in the previous chapter the role of teleology was seen to be important. The idea of *purpose* is something that is very much part of NNL. The process of questioning about worth is an aspect of human behaviour that indicates that there is value to be found and enjoyed. Thus the outcome of activity in terms of goodness and usefulness is an integral part of NNL. Finnis considers that this is such a crucial part of life that he considers it may be indicative of the existence of God.

The way that NNL argues that in order to live a good life, certain behaviours and values follow, is paralleled in the emergence of the Military Covenant in the sphere of defence. For the key to understanding the development of the Military Covenant is that it arises out of consideration of what is necessary from the state and society if

the army is to do undertake its tasks effectively. In other words to achieve a certain outcome, what is necessary? This is a teleological way of proceeding.

In the past two chapters a great deal of ground has been covered. Leading on from the emergence of the importance of virtue in public life, an attempt has been made to move this toward a home in the natural law tradition. Virtue is a product of the rational aim of human life, which is to live in a way that enables flourishing to occur. This well-being is brought about by reflecting on the human plight. Given the ability each person has to recognise that he or she is a creature of immense potential yet also one that is limited by resources and time, the most reasonable way to live is to organise life so as to reach the greatest good that can be achieved in the unique circumstances each person possesses. Fundamentally, this is an act of will exercised through decision-making.

One aspect of living well is to live peaceably. Conflict is disruptive of this and therefore should be avoided. However, when life is threatened, there is a moral duty to act protectively and to preserve it. This is the basis for defence. How this is organised is an existential aspect of life, and one in which the capacity of human beings to make decisions, is heightened in importance. Yet it is still an area where moral thinking, the choices a person makes in order to find the greatest well-being that he or she can, must prevail against a mechanistic mind-set that confuses means and ends. Teleology is critical.

This is the pattern of thinking that ultimately leads to the Military Covenant. It is a significant expression by society, which is the political manifestation of the complex combination of individual people, towards ensuring that the armed forces have the capacity to undertake their duty towards the people. It is within a natural law tradition, therefore, that the Military Covenant finds its truest home.

## Conclusion

In *Love: A History*, Simon May argues that people seek to find a basis for their being which is grounded in love which he defines as ...

...the rapture we feel for the people and things that inspire in us the hope of an indestructible grounding for our life.

Love, he continues, provides an “ontological rootedness”.

My suggestion is that we will love only those (very rare) people or things or ideas or disciplines or landscapes that can inspire in us a promise of ontological rootedness. (All references from May 2011:6).

Implicit in this view is the sense that human activity is goal-driven: we direct the efforts of our lives towards attaining *meaning* or *value*. May’s argument is important because it deepens the view that *behaviourally* human activity is goal-driven, something seen in individual conduct and developments in society.

In the preceding chapters of this thesis, an argument has been set out in largely prosaic language. However, that love should find itself being discussed at the close of this study is perhaps less surprising than it might seem.

In Part One, the Military Covenant was introduced with an explanation offered of its origins. The story of its emergence reveals that it was a period of intense struggle in a fundamental institution of the state. In the light of the successful end of the Cold War, what was the British army *for* now that circumstances were changed? Part of that existential question was the related one of the relationship between the army and the wider country: how should the relationship be understood?

The solution provided by the idea of the Military Covenant is one that is elegant but also effective. It is based upon an easy to understand proposition. In order for the army to undertake its task of defending the country, it has a requirement that is different to other aspects of the state and that it requires special consideration in terms of public goods. While military personnel bear the awful responsibility of having, when necessary, to kill the enemy, they are also absolutely required to bear the commensurate risk of losing their own lives. So the practical elides into the language of sacrifice, with its spiritual connotation.

This line of reasoning is a consistent one: in order to achieve the necessary outcome – acts of specified violence – an agent is necessary. However that transaction should not lose access to what lies at the heart of it: that there are sentient human beings who have to undertake it. While a barrier has to be crossed – the repugnance of killing – how are those who bear the task of making that journey to be regarded? It is in providing the solution to this that the Military Covenant reveals its sophistication and grace.

Chapter Two provides a lengthy survey of the covenant-idea. After showing the struggle that some have in finding an adequate explanation by using unconvincing psychological approaches, attention focuses on the biblical and theological provenance of the term. At its heart, covenant is shown to be about an unconditional binding that establishes a relationship that leads to *perilous* action. Whilst debate surrounds the origin of the covenant in the Old Testament – inevitable given that a deeply ancient concept is involved – its use by Jesus Christ to describe the central act of his life – his death – moves us into unusual territory for contemporary public policy. Covenant is language that connects us with something that is precious or, better, sacred.

In case one is tempted to feel that such a leap is difficult because of the conceptual gap between ancient texts and the present, there is the assistance provided by Reformation and Renaissance usage, buttressed by some evidence of modern relevance.

One of the strongest descriptions of the covenant-idea is that of it as something liminal. It occupies a marginal space that brings into contact the everyday world to which the language of contract belongs, with that dimension of being which May refers in his identification of love with ontological rootedness: that utter experience beyond which there is only annihilation. The covenant-idea exposes us to that which is at the edge of our conceptual framework: it offers us a way of expressing something that otherwise cannot be explained and thus it has genuine utility. However there are also other matters that are liminal. One of them is the paradoxical nature of soldiering.

Soldiers are men and women who, in different circumstances, are a neighbour or a work colleague, but who have chosen a particular job or profession. They are not a separate type of person. Since the Northern Ireland Troubles, the British army has, because of security concerns and because it is considerably numerically smaller, largely disappeared from daily visibility from society. In a way that was not true in years past, the army consists of people who are not known to other members of the UK population to the same measure as in earlier years. It is ironic therefore that for matters of defence, the great majority of the British depend upon those unknown to them: a situation made more poignant as soldiers are usually young men and women from more socially and educational challenging circumstances than they themselves. It is also noteworthy that soldiers undertake an activity from which, at best they only indirectly benefit from. Although soldiers materially receive pay and conditions that are commensurate with similarly experienced and qualified civilian peers, by virtue of their military service they always have a marginal relationship to society. As soldiers, they have undertaken to enter the arena of conflict, with no guarantee that they will emerge either alive or unscathed. Although they may well have relatives and friends who benefit from this central reality of military service, service personnel themselves have handed over to the state, to others, the possibility of the loss of their lives. *It is because of this that soldiering itself may be regarded as a liminal activity.*

It therefore follows that the Military Covenant is conceptually a brilliant means of dealing with this juxtaposition of two matters that are each liminal. The meaning of covenant is expressive of the deepest nature of military service, while also being an illustration of how a largely hidden Christian theological influence in UK society operates creatively.

This is the essence of the proposition that is then subjected to the ideas of John Rawls and his fellow-travellers. In Part Two, with *TJ* as the lead text, the Military Covenant as is subjected to scrutiny. This examination is a broad one. In Chapter Three Rawls' conception of justice-as-fairness is set out which leads to a critical examination in Chapters Four and Five in which it is found wanting. This conclusion

is reinforced by the findings of Chapter Six where Rawls' humanistic perspective is further considered and challenged and found to be rather optimistic.

At the centre of Rawls' thinking is a humanistic perspective that is deeply flawed. Its emphasis upon reasonableness and rationality, with a heavily American accent, lacks sufficient dexterity to embrace the complexity of human nature and understanding. What emerges is that the theological concept of the covenant-idea provides a reach and contains a depth that is descriptive of an aspect of human experience that otherwise cannot be adequately expressed. This is suggestive of something that may lie beyond the scope of thesis: that theological discourse expresses a dimension of human experience in regard to questions and issues of meaning and motivation that, in some circumstances, is unique. There is an elevated quality to the theologically-informed imagination and, in comparison, that of the secular humanist is impoverished. In practical terms this leads to a reduction in understanding.

An important argument of this thesis is that Rawls' rejection of Christianity was a consistent feature of his life following the Second World War. Chapter Seven shows that he never wavered in this attitude. The impression that arises having considered him is that Rawls held that religiously-minded individuals were not to be taken fully seriously: their belief in God made their reasoning suspect and, it followed, their pronouncements and activity suspect and unreliable. He held this view despite recognising the difficulties that existed with *TJ* and his recognition that some comprehensive views were religious ones. Despite this recognition however, it would be a serious mistake to misunderstand that he regarded them as having legitimacy in political matters. I would maintain that he never moved beyond the attitude he expressed in *TJ* over pacifism. Rawls made a careful distinction between the pacifist and the conscientious refuser, the former an unreasonable position that was often rooted in religion and the latter which was a political matter. If we follow Rawls' thinking here, it is only when the pacifist abandons their uncompromising rejection of violence and adopts a specific issue-based, such as the Vietnam war, that his views merit consideration. This is the distinction that characterises his views more generally with regard to the religious voice in public affairs: only when a believer ceases their God-talk and presents their views in prosaic terms, should their opinion

be valid. The onus lies wholly on the religious believer to make their views acceptable, rather than on the non-believer to use their imagination and intellect to 'translate' the discourse into their own idiom of understanding. *It is crucial here to appreciate that it is not a tactic being commended here: a religious believer or indeed any holder of a comprehensive view might wisely choose to express their argument in a non-contentious manner. What Rawls is objecting to is the holder of such a view to operate in a non-secular manner in principle.* An illustration of this is provided by Warnock's objection to the presence of bishops in the House of Lords because of their religious identity regardless of the soundness any expression of argument in Parliament.

Chapter Eight turns the discussion in a UK direction which, given that it is the Military Covenant that holds this study together, is appropriate. Rawls' views are echoed in those of Mary Warnock who trenchantly argues for the secular viewpoint in public affairs in her view, Christianity as a deposit of anything helpful to policy developments is long over. Like Rawls, she is a reductionist in her approach. What matters is the rational, even if it disallows insights from other perspectives. A comparison is provided to her views by those of Richard Harries. His argument is similar but broader than the one made in this thesis. He argues that Christianity is such an integral part of the Western heritage that it cannot be either successfully or reasonably be excised from public understanding. Significantly, Harries cannot be characterised as some kind of intellectual backwoodsman. His participation in many fields of current public concern, such as human embryology and gender orientation preclude this suggestion. He therefore operates in the public sphere from a faith-perspective, well aware that he has to give an account of his views that are susceptible to examination by those who may well hold views that are the antithesis of his own.

Part Two may well be regarded as the central part of this study. It takes a proposal established in Part One and tests it through the ideas of a leading public philosopher whose views are themselves scrutinised. The outcome is that the theologically grounded concept of the covenant-idea expressed in the Military Covenant is found to provide utility in public understanding and which is beyond the scope of secular

humanism to embrace. This leads to Part Three, which is an enquiry to find a more appropriate philosophy that is more permissive of insights from across the spectrum of human understanding. This led to an examination of New Natural Law.

For Grisez and Finnis, the two leading proponents of NNL, the inquisitive nature possessed by human beings gives rise to the ability to make decisions that enable people to live well and to organise society accordingly. It is this that ultimately gives rise to the Military Covenant. Although the opening chapters of this thesis explore the origins of the Covenant in terms of the rebalancing of the army after the end of the Cold war, it has been shown that the kernel of the meaning of the Military Covenant is that of selfless sacrifice on behalf of military personnel. As discussed above, it is a paradox that this notion, because it relies upon the willingness to undertake a perilous activity, is an expression of, and witness to, the ultimate significance of the good of life. In order to sustain the conditions that lead to human thriving, armed forces can operate as protection against harm. Post-Augustinian realism recognises that the world is a complex environment in which there are perils that endanger well-being and which cause harm and which can only be countered by acting justly in a violent manner.

This movement towards attaining meaning or value within human activity does not appear always obvious. History contains many examples of barbarous outlooks and behaviour. It is also an approach that is inextricably bound up with a religious belief, although it is an outlook that appears in many other world-views including, in attenuated form, Rawls'. Therefore the view that humanity seeks to operate in a manner that is moral and improving is best regarded as an *implicit* activity; it is hidden, reliant upon permissive specific circumstances to emerge, yet also pervasive.

The reason why this is the situation we find ourselves in is not too difficult to find. For human beings to thrive, mutuality is at the core, indeed is the core. In his recent book *Inventing the Individual* Siedentop shows how the concept of the individual emerges from the Classical world under the pressure of insights gained from Christianity. Its emergence brought a fundamental and fresh understanding that each person has



equal value. Against those who are dismissive of God-talk, Siedentop asserts that “the idea of the incarnation is at the root of Christian egalitarianism” and was the ground from which modern liberalism has emerged (Siedentop 2014:247).

*Mutuality is what people do.* From the intimacies of family life, through to the anonymity of capitalist finance, mutuality leads to organisational behaviour. Whilst in the benign circumstances of family life this is most easily seen, it is also, to re-use Smith’s famous metaphor, the “hidden hand” that pervades human enterprise.

In the light of this argument, a key is provided that explains what it is that drives moral philosophy. In the face of mutuality as the defining human activity, moral philosophy is an attempt to explicate it. This, it can be argued, is what Kant (Paton 1978) is concerned about. Observing the moral nature of people, can a universal law be constructed that captures human conduct? Kant recognised that people behaved, ultimately if not consistently, in a moral manner, so could he find a way of summarising this? (see Paton 1978:98)

This use of mutuality is a very broad interpretation of human activity. It is brought into sharper focus by justice which, this thesis suggests, is a mechanism for making real in concrete terms circumstances in which, in an overall sense, allows people to thrive. Creating such situations is visible in both Rawls’ and Grisez’s work.

The Military Covenant is a discreet manifestation of this. The contention that it is a contribution to human thriving will only be contentious to those who are of a radical pacifist view-point for whom any aspect of military activity is a case of “adjournment sine die”. Standing within the Just War tradition it has been argued, through the fine lens of NNL, that war is not always the greatest misfortune that can beset humanity. It is in that manner that the military makes a contribution to the common good. What also emerges, and in a manner that exposes the limitations of Rawls’ conception in *TJ*, is the role of Christianity in public life. Many of the writings of Rowan Williams and the contributors to the volume *Religious Voices in Public Places* (Biggar and Hogan: 2009) argue for the continuing relevance of Christianity for contemporary society. What this thesis attempts to show is something a little different: without an

engagement and understanding with theological concepts, contemporary reflection in public affairs will become truncated and incomplete. This is a real and deep danger, as the attempts by Tipping and Walters show in their analysis of the Military Covenant which lack any engagement with theological understanding. Whilst this may be seen to be a vindication of the secularization thesis, because the decline of religion in society would appear to result in a decline in religious understanding, that conclusion is not inevitable. The secularization thesis is open to question: analysts of contemporary affairs often fail to appreciate the significance of theology and spirituality.

The role of religion is not just compatible with the above, but also provides a narrative for much of it in the life of Jesus. His self-giving *for others* in order that they may thrive lies at the heart of the Christian faith in the same way that it has been argued that mutuality lies at the core of human activity. That this should be so is hopefully not a surprise. Two things especially stand-out. Firstly, both the life of Jesus and the Military Covenant share a commonality as both can be successfully interpreted by the theme of covenant. Secondly, both the life of Jesus and that of the soldier have something to do, ultimately, with love if it is that which leads to the sort of self-giving which is the irreducible rock that sustains the good life.

Why then does NNL provide a better conceptual interpretation of the Military Covenant than Rawls? The answer lies in the fact that NNL is in principle more open to the liminal nature of that Covenant than Rawls. It is not that the Military Covenant is *per se* religious, and so is NNL. That would be to cut corners in an illicit manner. All that this thesis has argued is that the religious roots of the covenant idea need to be recognised, and that the Military Covenant is a liminal idea. Secondly, and Finnis' caution is important at this point, NNL does not require any religious belief to be justified. But given the religious roots of the Covenant and its liminality; given the openness of NNL to a rich concept of basic human goods, and so to the place of religion in public life; then, even allowing for the very nuanced way in which NNL affirms the concept of deterrence, this thesis argues that the Military Covenant can be understood as having value from the perspective of NNL rather than that of

Rawls. In so doing, the thesis seeks to affirm once more the continuing significance of religion, and theological discourse, in British public life.

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