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## The Just War Tradition and Natural Law

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Jean Bethke Elshtain

## **Abstract**

This Essay is divided into three parts. First, it briefly discusses Augustine on the notion of a “naturalistic morality” implanted in human minds and hearts. Second, it traces the ways in which such notions as human nature figure in Augustinian and post-Augustinian arguments concerning war and peace. Third, it takes the measure of our current international crises and challenges from the perspective of human dignity the “naturalistic morality” Augustine addresses when he insists that there is, in fact, a nature we share, trails in its wake far-reaching ethical complications.

# THE JUST WAR TRADITION AND NATURAL LAW: A DISCUSSION

## THE JUST WAR TRADITION AND NATURAL LAW

*Jean Bethke Elshtain\**

### INTRODUCTION

I am not, strictly speaking, a natural law thinker, so I am particularly pleased at your generosity in inviting me to appear as part of this venerable forum.<sup>1</sup> I have been called many things over the course of my thirty-plus-year engagement with, and within, the public square. Most recently, I find myself tagged an “Augustinian political theorist.”<sup>2</sup> In light of this fact, it seems worthwhile to unpack this Augustinian dimension and to determine how, when, and where it links up to some notion of “natural law.”

Often we understand natural law in a hard or maximal form as underwriting a deontological mode of moral reasoning<sup>3</sup> that assumes a very tight connection between a categorical moral norm and human behavior, including those actions encompassed by the political realm.<sup>4</sup> There is, however, a more porous, less deontological way of speaking of what is given by nature that co-exists comfortably with Augustinianism — certainly with political Augustinianism. It will be the burden of this Essay

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1. Originally presented at the Fordham Natural Law Colloquium on September 9, 2004, held at the Fordham University School of Law.

2. See generally Jean Bethke Elshtain, *Why Augustine? Why Now?*, 52 CATH. U. L. REV. 283 (2003) [hereinafter Elshtain, *Why Augustine?*] (highlighting aspects of Augustine’s work that have implications for political theory).

3. Deontology is a theory of moral obligation with a focus on rights and duties. It holds that duties often correlate to, and arise from, these rights, and vice versa. See Tim Stelzig, *Deontology, Governmental Action, and the Distributive Exemption: How the Trolley Problem Shapes the Relationship Between Rights and Policy*, 146 U. PA. L. REV. 901, 907-08 (1998). For example, “if I have a right to be punched, you are under an obligation not to punch me, and conversely.” *Id.* at 907.

4. See, e.g., JOHN RAWLS, A THEORY OF JUSTICE (1971).

to display this mode of reasoning about nature and “the natural.”

This Essay is divided into three parts. First, I will briefly discuss Augustine on the notion of a “naturalistic morality” implanted in human minds and hearts. Second, I will trace the ways in which such notions as human nature figure in Augustinian and post-Augustinian arguments concerning war and peace. Third, I will take the measure of our current international crises and challenges from the perspective of human dignity. The “naturalistic morality” Augustine addresses when he insists that there is, in fact, a nature we share, trails in its wake far-reaching ethical implications.

A student of Augustine must work through the dilemma that Augustine’s version of our natures is not so “hard-wired.” That is, that the connection between nature and human deeds, actions, norms, goods, and assessments of wrongs is not forged with the moral equivalent of super-glue.<sup>5</sup> The connection is there, but it is more porous and admits of prudential judgment,<sup>6</sup> depending upon circumstance. The naturalistic, nature, and the natural in the Augustinian tradition lends itself not so much to a strong deontological account of morality and moral reasoning as to a notion of *phronesis*,<sup>7</sup> or practical reason, which lies at the very heart of human social and political life.<sup>8</sup> Let us turn to Augustine.

## I. AUGUSTINE ON NATURALISTIC MORALITY

Václav Havel, former Czech President, and a political hero

5. See Elshstain, *Why Augustine?*, *supra* note 2, at 286-91 (discussing Augustine’s “appreciation for the chaotic nature of human existence.”).

6. See Catholic Church, Catechism 2309. The term “prudential judgment” is used in Catechism 2309 in discussing the conditions for a legitimate defense by military force. “The evaluation of these conditions for moral legitimacy belongs to the prudential judgment of those who have responsibility for the common good.” *Id.*

7. Aristotle first discussed *phronesis*, or practical wisdom, in the Nicomachean Ethics. *Phronesis* is characterized by the use of deliberation, choice, and action, and is less abstract than *sophia*, or theoretical wisdom. *Phronesis* focuses primarily on what should be done in a situation. See Brett G. Scharffs, *The Character of Legal Reasoning*, 61 WASH. & LEE L. REV. 733, 744 (2004).

8. Augustine’s status as a moral realist is supererogatory in the context of this Paper. For Augustine, there is a *there* there: there are objective truths to be discovered, honored, encoded. See JAMES WETZEL, AUGUSTINE AND THE LIMITS OF VIRTUE 10-20 (1992); see also Elshstain, *Why Augustine?*, *supra* note 2, at 287-91 (discussing Wetzel’s finding that Augustine thinks “we can come to know certain truths.”).

of our times, notes on human behavior and the loss of respect for others:

The relativization of all moral norms, the crisis of authority, the reduction of life to the pursuit of immediate material gain without regard for its general consequences — the very things Western democracy is most criticized for — do not originate in democracy but in that which modern man has lost: his transcendental anchor, and along with it the only genuine source of his responsibility and self-respect. . . . Given its fatal incorrigibility, humanity probably will have to go through many more Rwandas and Chernobyls before it understands how unbelievably shortsighted a human being can be who has forgotten that he is not God.<sup>9</sup>

One way that we have contrived to forget that we are not God is to forget that we have natures. We are, we are told, just bundles of impulses and random combinations of DNA — that is until the genetic engineers achieve a dream of perfecting our genes and guaranteeing nigh-perfect human products through “positive genetic enhancement.” If we have genes but no natures, there is no intrinsic connection between ourselves and our fellows save that we are mammals of a certain sort who share much of our DNA with the higher primates.<sup>10</sup> One standard plaint goes: any talk of a specifically *human* nature that is not reducible to biological and genetic predicates is so much balderdash, fashioned historically in order to curb human freedom, to deny the free expression of our polymorphously perverse sexuality, and to hand over to rigid moralists the power to control human expression.<sup>11</sup>

At the same time, paradoxically, some do talk of a human nature, but in a reductionistic and materialist way that claims we are hard-wired animals of no special standing.<sup>12</sup> So there are two trends if one either denies a human nature or denies that we are the creatures of a good Creator. Either (a) we affirm a view of

9. Václav Havel, *Forgetting That We Are Not God*, 51 *FIRST THINGS* 47, 49-50 (1995) available at <http://www.firstthings.com/ftissues/ft9503/articles/havel.html> (last visited Feb. 21, 2005).

10. See JEAN BETHKE ELSHTAIN, *WHO ARE WE? CRITICAL REFLECTIONS AND HOPEFUL POSSIBILITIES* 88-92 (2000) (positing that undertakings such as the Human Genome Project emphasize the physical self as the one in need of improvement).

11. See *id.* at 101-03 (discussing the arguments of those who would permit cloning).

12. See *id.* at 43-44 (discussing “perverted freedom” that leads to the individual being seen only in terms of his utility to the community).

our nigh infinite plasticity, or (b) we more readily embrace the view that we are driven to maximize our reproductive strategies given the socio-biological “laws” that determine us.<sup>13</sup> The plastic person posture insists that talk of human nature denies freedom.<sup>14</sup> The evolutionary biological posture argues that the *human* modifier of nature in no way alters the fact that we are but tools in the hands a powerful bio-evolutionary force of which we ourselves know nothing even as we do its bidding.<sup>15</sup>

The Augustinian argument, by contrast, is that there is a naturalistic morality written on the hearts of God’s sentient creatures.<sup>16</sup> By nature, no man has dominion over any other.<sup>17</sup> As well, by nature, we are not evil: that entered the world through an act of free will and is the burden all successive generations bear and one to which they add their own deposit of sin.<sup>18</sup> Neither are we political by nature, although we are indeed social creatures: the life of the saints is deeply social, Augustine tells us.<sup>19</sup> The call of nature may move us into fellowship with one

13. *See id.* at 88-92 (criticizing the Human Genome Project as rejection of the body itself).

14. *See id.* at 86-88 (discussing Christian freedom as real and limited). Christian freedom is not opposed to natural order and acts faithfully to it. Christian freedom consists of the ability to avoid excessive identification with culture, which lowers moral expectations. *See id.*

15. *See id.* at 88-89 (discussing modern denials of the limits freedom via scientific projects). The Human Genome Project, for example, is the fruit of limitless freedom, one that proposes to control and master the human body. *See id.*

16. *See* JEAN BETHKE ELSHTAIN, *AUGUSTINE AND THE LIMITS OF POLITICS* 25 (1995) [hereinafter ELSHTAIN, *LIMITS OF POLITICS*]. Augustine felt that humans, as God’s creations, were moral by nature. They have freedom and free will to cling to God or turn from Him, but they must choose their path. *See id.*; *see also* AUGUSTINE, *CITY OF GOD AGAINST THE PAGANS* 476 (Henry Bettenson trans., 1972) [hereinafter AUGUSTINE, *CITY OF GOD*] (“And so all nature’s substances are good, because they exist and therefore have their own mode and kind of being, and, in their fashion, a peace and harmony among themselves.”).

17. *See* ELSHTAIN, *LIMITS OF POLITICS*, *supra* note 16, at 26. Since we are not political by nature, it can not be natural that one man should dominate others. *See id.*; *see also* AUGUSTINE, *CITY OF GOD*, *supra* note 16, at 875 (“And yet by nature, in the condition in which God created man, no man is the slave either of man or of sin.”).

18. *See* ELSHTAIN, *LIMITS OF POLITICS*, *supra* note 16, at 25-26, 80, 82-83. It is not natures that creates evil but the freedom to choose. In choosing sin, one gives into temptation and evil results. *See id.*; *see also*, AUGUSTINE, *CITY OF GOD*, *supra* note 16, at 858 (“The philosophies hold the view that the life of the wise man should be social; and in this we support them much more heartily.”).

19. *See* ELSHTAIN, *LIMITS OF POLITICS*, *supra* note 16, at 96. By nature, man is not political, but he is social. People come together, and through small acts, contribute to social order. It is human will and design that leads to politics. *See id.*

another.<sup>20</sup> But nature's reign is not sufficient unto itself.<sup>21</sup> Human projects must be enacted, and they will be driven either by *caritas* or *cupiditas*, by, in other words, right or wrong intention.<sup>22</sup>

Less well known is Augustine's insistence that one basis for order and comity in the earthly city is the ontological, one might say, natural, equality of men and women.<sup>23</sup> Augustine's claims about men and women as equally God's creatures — and this is a given — helps to undo antique philosophies that dictated a separate and inferior female nature and consigned women to a less rational and complete realm as a result. We see here and elsewhere that presuppositions of what lies in the order of nature bear profound implications for human relations, from families to polities.<sup>24</sup> Augustine writes that "human nature itself, which is complete in both sexes, has been made to the image of God, and he does not exclude the woman from being understood as the image of God."<sup>25</sup>

Let us sum up the Augustinian position thus far: There is a *human* nature.<sup>26</sup> We are all created in the image of God.<sup>27</sup> This includes strange and marvelous creatures many would not think to be sons of Adam — as Augustine repeats some of the stories Pliny tells about odd beings who look very little like human beings as we know them but, to the extent that they are social and communicate through language, they are rightfully said to be children of God.<sup>28</sup> Our natures mean that we are born within

20. *See id.* at 35-36, 41. Basic needs, such for safety and food, move us in to fellowship. *See id.*

21. *See id.* at 41. While basic human needs bring us together, this is not sufficient. People must take the initiative to act. *See id.*

22. *See id.* The human action that is required to create a civic, political life can take one of two paths, *caritas* or *cupiditas*. A society built on *caritas* will be heavenly while one built on *cupiditas* will result in deepening misery. *See id.*

23. *See id.* at 39. In the household, Augustine assumed that by nature, men and women are equal while accepting that they occupy different stations in life. The difference is dictated by natural order and convention. *See id.*

24. *See id.* at 39-41. Augustine felt that the battle between *caritas* and *cupiditas* had deep repercussions for all aspects of human life. Repressing *cupiditas* leads to domestic peace which in turn leads to civic peace. *See id.*

25. *Id.* at 44 (quoting AUGUSTINE, 12 THE TRINITY 351-52 (Catholic University of America Press, 1992)).

26. *See* Elshtain, *Why Augustine?*, *supra* note 2, at 285-90 (discussing generally the self).

27. *See id.* at 290.

28. *See* ELSHTAIN, *LIMITS OF POLITICS*, *supra* note 16, at 43. The entire human race

and created for social life.<sup>29</sup>

But this nature does not dictate any particular way of life if one's reference point is a type of political regime.<sup>30</sup> It does underscore the naturalness of certain social arrangements, including families.<sup>31</sup> But, in refusing to politicize family relations, Augustine undercuts one of the arguments used historically to bolster patriarchy as the only natural and, therefore, normatively justifiable, mode of political organization.<sup>32</sup> Augustine emphasizes our creatureliness; our dependencies and our interdependencies — all flow from our created natures. But, from that, we either act in obedience to God or we disobey as did Adam and Eve thereby committing the ur-sin that forever after mars the human landscape. This obedience to God is not presented by Augustine as obedience to so many stipulated "laws of nature" so much as acting in obedience to God's call to faithfulness, openness to grace, and love for the mediator, the second person of the Trinity, that God sends down to us so that we might rise to Him.

## II. HOW DOES NATURE FIGURE INTO POST-AUGUSTINE JUST WAR ARGUMENTS?

It is a truism to describe the just war tradition as rich and complex, heavily sedimented over with the soot and sands of time. My task is not to assay this history so much as to reflect on whether "natural law," in either a "hard" or soft version, plays any part at all in the origins, and the continuing story, of the just, or justified, war tradition. The answer is yes, but it is a yes that requires explanation.

Given that early just war theory emerged from the *theologies*

belongs to one category—human—because God created all, even those bizarre creatures most resistant to being called human. Augustine discussed these bizarre creatures described in Pliny's *Natural History*. If these creatures are moral and rational, they are human. *See id.*

29. *See id.* at 26. A common need for food, shelter, etc., brings humans together in to a relationship that is first social. *See id.*

30. *See* Elshtain, *Why Augustine?*, *supra* note 2, at 291-92. Political life is a form assumed by human social and ethical life. Human sociality is innate and is sought through the social forms created by people. No specific social order is dictated, however, and no human has dominion over another. Rather, civic order is an expression of our natures. *See id.*

31. *See id.* at 292-93. Augustine believed that by nature, the father is the household authority but in politics, where one is subject to a ruler, it is not by nature. *See id.*

32. *See id.*



of St. Ambrose of Milan<sup>33</sup> and of the great Augustine,<sup>34</sup> it would be nigh unthinkable that human nature, fallen and redeemed, would play no role in just war argument. I have already noted Augustine's wonderfully generous definition of humanity — the entire sentient human race belongs within one category, the human, for God created us all, male and female, diverse races, even bizarre creatures most of us would scarcely call human. Fine, you might say, but how does this cash out ethically?

We begin with the self. God did not begin with the human species but with singularity. With other creatures, whether those of solitary habit “who walk alone and love solitude,” or those who are “gregarious, preferring to live in flocks and herds, God “commanded many to come into existence at once.”<sup>35</sup> But not so the human person. Here God created “one individual; but that did not mean that he was to remain alone, bereft of human society. God's intention was that in this way the unity of human society and the bonds of human sympathy be more emphatically brought home to man, if men were bound together not merely by likeness in nature but also by feeling of kinship.”<sup>36</sup> Spread out upon the face of the earth, living under many customs and distinguished by a “complex variety of languages, arms, and dress,” all participate in that fellowship we call human society; all are marked by the point of origin from one; all are called to membership in the two cities.<sup>37</sup>

The importance of plurality, of the many emerging from a unique one, cannot be underestimated in Augustine's work. Emerging from “one” creates a fragile bond of peace, or relative peacefulness. Bonds of affection tied human beings from the

33. Bishop of Milan, c. 339-97. Credited in part for converting Augustine to Christianity, Ambrose baptized Augustine in 386 and is recognized as one of four traditional Doctors of the Latin Church. His well-known written works include *DE SACRAMENTIS* and *DE OFFICIIS MINISTRORUM* (a treatise on Christian ethics based largely on Cicero). See *OXFORD DICTIONARY OF THE CHRISTIAN CHURCH* 49 (E.A. Livingstone ed., 1997).

34. Lecturing at Columbia University in 1954, the medievalist Professor Dino Bigongiari specifically credited Augustine with the earliest articulation of “just war” theory (“[W]e must not forget that St. Augustine himself has given us the Christian theory of a just war.”), and noted that Augustine's spiritual theory later played a significant role in the persecution of heretics, the Crusades, and modern Roman Catholic doctrine. See Dino Bigongiari, *The Political Ideas of St. Augustine*, Lecture at Columbia University (1954), reprinted in *THE POLITICAL WRITINGS OF ST. AUGUSTINE 3434* (Henry Paolucci ed., 1962) (1954).

35. AUGUSTINE, *CITY OF GOD*, *supra* note 16, at 502.

36. *Id.*

37. *Id.* at 498-502.

start. Bonds of kinship and affection bound them further. The more these relationships are dispersed, finally encompassing the entire globe, and in light of the confusion and confounding of human languages, the more difficult it is to repair to this fundamental kinship or sociality in order to strike a blow for a decent civic order and against anarchy and random violence. For Augustine understands just how estranged we are. He tells us it is often easier to have fellowship with one's dog than with someone whose language one does not understand.<sup>38</sup> Nevertheless, there is something like a common nature and it is this thread of commonality that supports both individuals and plurality.

Issues of war and peace are played out in the *saeculum*, the historic present between creation and the end-time. An imperfect but nonetheless real earthly peace lies within the realm of the possible.<sup>39</sup> The Heavenly City's image of perfect peace, however, does not lie within our reach.<sup>40</sup> At the same time, peace itself can never be endorsed uncritically. For Augustine offers a withering critique of the injustices that traffic under the name of peace.<sup>41</sup> And justice is what is at stake in any discussion of war and peace — a justice that repairs to our fragile bonds of sociality and seeks to mend bonds that have already been broken or frayed by violent acts. Ambrose, Augustine, later Aquinas, all are associated with the just war tradition, and all regarded their arguments as a consistent evolution from early Christian teaching, not a deviation from it.<sup>42</sup>

They knew that in a fallen world, filled with imperfect human beings, we cannot achieve perfection in earthly dominion, or religious life, or in anything else and that — even more important — we all have a responsibility to and for one another to serve and to love our neighbors.<sup>43</sup> If our neighbor is being

38. See *id.* at 861 ("So true is this that a man would be more cheerful with his dog for company than with a foreigner.").

39. The feasibility of an earthly peace can be inferred, in Augustine's writing, from Augustine's own confident description of the motives that drive human existence. See, e.g., *id.* at 865-70 ("Peace is the instinctive aim of all creatures, and is even the ultimate purpose of war.").

40. See *id.* at 75 ("true justice is found only in that commonwealth whose founder and ruler is Christ. . .").

41. See generally Elshtain, *Why Augustine?*, *supra* note 2.

42. See JEAN BETHKE ELSHTAIN, *JUST WAR AGAINST TERROR: THE BURDEN OF AMERICAN POWER IN A VIOLENT WORLD* 51 (2003) (discussing the works these authors as consistent with Christian teaching).

43. See *id.* at 51 (discussing the duty of humans toward one another in a fallen world).

slaughtered, or systematically and continually crushed by the heavy hand of an intolerable oppression, the just use of force and the vocation of soldiering rise to the fore as options to which we may be urged, perhaps even commanded, by a God of justice.<sup>44</sup>

What is forbidden to the individual — use of lawless violence against another — is sanctioned for the social body, in the form of rule-governed use of force, and in and through the offices of statesmen and women and soldiering in a just cause.<sup>45</sup> Augustine's account of love — or the ways we are enjoined to love one another — feeds directly into his approach to the ethics and morality of war. Lest this sound suspiciously Orwellian — I love my neighbor and therefore I must fight — it needs more fleshing out.

The Christian just war tradition is built on both charity and justice.

Charity — love of God and neighbor — compels Christians to seek justice for their neighbors. The just war tradition provides the Church [for originally the teaching was for and within the Church] with the means to determine how justice is to be sought and the grounds for penalizing those who stray too far from its prohibitions.<sup>46</sup>

The criteria for a justifiable war — the *jus ad bellum* — have been spelled out many, many times by myself and others. One might summarize these as: acting under right authority, having a just cause, fighting with the right intention, a reasonable hope of success, and war as the best available means to right, or to prevent, a grievous wrong. (This got translated over time as “last resort,” although last resort did not really figure in the thinking of Ambrose, Aquinas, or Augustine.)

Just war, then, is driven by a call to justice that is embedded in an account of our natures, created and fallen. The aim is to repair that which has been torn asunder by a prior violence and to protect a community for which one has responsibility, or both. For Augustine, one can never get away from original sin but that does not preclude seeking right order — justice — be-

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44. *See id.* at 52.

45. *See* Elshstain, *Why Augustine?*, *supra* note 2, at 299 (discussing neighborly love as a justification for a war of protection).

46. ALEXANDER F.C. WEBSTER & DARRELL COLE, *THE VIRTUE OF WAR: RECLAIMING THE CLASSIC CHRISTIAN TRADITIONS EAST AND WEST* 47 (2004).

tween peoples and between peoples and God.<sup>47</sup> The earthly city must hold violence in check.<sup>48</sup> Fighting under rules of engagement — the *jus in bello* — in order to minimize civilian casualties, can help to create or to protect the safe surround that permits ordinary civic peace to flourish.<sup>49</sup> The force brought to bear as an instrument of justice cannot be uncontrolled violence. It is not private violence. It is the use of force at the behest of right authority.

For Augustine, a resort to force may, as I have noted, be an obligation of *caritas* or neighbor love.<sup>50</sup> An offense that triggers a forceful response may be suffered by a third party. Why should one care? One cares because our ethical obligations extend to all *qua* human, hence marked by the *imago dei*.<sup>51</sup> This applies to all without exception. We do not owe *identical* ethical obligations to all — some of our ethical obligations are “thicker” than others — but none is to be permitted to wander in a violent state of nature outside the boundaries of moral concern. So the war to be resorted to in order to preserve or to achieve peace is not just any peace (for there can be a peace of the desert, too) but a just peace that leaves the world better off than it was prior to the resort to force.<sup>52</sup> Again, the nonviolence obligatory at the individual level is reversed at the level of social life where the resort

47. See ELSHTAIN, LIMITS OF POLITICS, *supra* note 16, at 91-94 (explaining that Augustine “agrees that the earthly city is ‘marked’ or ‘stained’ by sin,” but that he “believed, as many Augustinian scholars have observed, that he had uncovered the lowest common denominators of human existence in the *saeculum*: a need for social life, hence a need for peace and order. . .”).

48. See Augustine, CITY OF GOD, *supra* note 16, at 877-78 (“The earthly city, whose life is not based on faith, aims at an earthly peace. . .”).

49. See *id.* at 866-70.

50. See generally Elshtain, *Why Augustine?*, *supra* note 2, at 299.

51. *Imago dei* is Latin for “Image of God.” According to *Genesis* and elsewhere, man was created in the image of God. See *Genesis* 1:26 (King James). The term “Image of God” was fundamental to the patristic understanding of the human person. Prior to St. Augustine, the primary significance of the expression “Image of God” was in the Son himself — man being a derived image of God, created in accordance with the Image, i.e., the Son. St. Augustine brought about a new influential development in the doctrine of the image. See OXFORD DICTIONARY OF THE CHRISTIAN CHURCH 820 (E.A. Livingstone ed., 1997) (“[T]he notion of the Son as the Image was dismissed as subordinationist and man’s soul came to be regarded as a direct image of the Holy Trinity, manifesting a threefold structure in memory, understanding, and will.”).

52. See Jean Bethke Elshtain, *Conference: The Third Annual Grotius Lecture: Just War and Humanitarian Intervention*, 17 AM. U. INT’L L. REV. 1, 7 (2001) [hereinafter Elshtain, *Just War*] (“Be certain before you intervene, even in a just cause, that you have a reasonable chance of success. Don’t make a bad situation worse.”).

to controlled use of force may be mandated.<sup>53</sup> Precisely because of the harrowing sacrifice made to redeem us from the bondage of sin, we must bind ourselves to defend and to protect others — as a response to organized, continuing and systematic violence or the imminent threat of such.<sup>54</sup>

Just war flows from *caritas* in the interest of a just *pax* or peace.<sup>55</sup> Thus, one might say that there was no peace for the Iraqi people under the brutal regime of Saddam Hussein. It would be cruel and preposterous to claim any such thing. Some three-hundred mass graves of the slaughtered have been unearthed and a political scientist has estimated that one could have expected an approximate 16,000 Iraqis per year to be killed or to die at the hands of the regime on a regular basis.<sup>56</sup> The United Nations' own figures on deaths of Iraqi children under the scandal of the oil for food and medicine program ran upwards to 60,000 Iraqi children per year as direct victims of the regime.<sup>57</sup>

Whatever one thinks of Operation Iraqi Freedom, these are harsh facts that *must be grappled with* precisely because of the natures we share with others, because of the dignity of all peoples that Christians are pledged to respect, to honor, and to uphold. Concern for human dignity is a bright thread that runs through all humanitarian interventions or calls to “rescue” persons being harried, tortured, and destroyed.<sup>58</sup> To me, this speaks to the naturalistic morality in the first instance — not nature in the Darwinian sense but nature in the theological sense. Our morally

53. See generally Joseph E. Capizzi, *On Behalf of the Neighbor*, 14(2) *STUD. IN CHRISTIAN ETHICS* 87-108 (2002).

54. See Elshtain, *Just War*, *supra* note 52, at 4 (“Protecting citizens from harm is a fundamental norm. . .”).

55. See generally, Elshtain, *Why Augustine?*, *supra* note 2, at 287 (“Such beliefs in the true nature of things are viewed through complex indirection and love, or *caritas*, which is a formed desire and a selfless goodness that spills over the boundaries of the self and reaches out to others and to God, who is the source of love.”).

56. See Gerard Alexander, *A Lifesaving War*, 9 *WKLY STANDARD*, Mar. 29, 2004, available at <http://weeklystandard.com/content/public/articles/000/000/003/889mgrz.asp?pg=2> (noting that 16,000 Iraqi children died a year between 1979 and March 2003).

57. See Helle Dale, *Food for Fraud; UN-Sadaam Profiteering*, *WASH. TIMES*, Apr. 21, 2004, available at [http://www.defenddemocracy.org/in\\_the\\_media/in\\_the\\_media\\_show.htm?doc\\_id=222446](http://www.defenddemocracy.org/in_the_media/in_the_media_show.htm?doc_id=222446) (stating that 5,000 children were harmed each month, amounting to 60,000 a year).

58. See Elshtain, *Just War*, *supra* note 52, at 7 (“Humanitarian intervention comes under the category of saving innocents from certain harm, or, as it is now more commonly called, those in need of rescue.”).

inscribed natures are offended when we see people systematically ill-dignified. We arrive at our sense of justice through our God-given reason. In sum, you cannot understand the just war tradition in full unless you make certain that that piece called “human nature” is fitted into the puzzle.

### III. AUGUSTINIAN NATURE, JUST WAR, AND OUR CURRENT SITUATION

Often, in discussions of just war and Christianity, most recently in an interview with the BBC, I am confronted with some question as: “If all this is Christian, why should it be obligatory on anyone else?”<sup>59</sup> For the following reasons: The call to protect one’s neighbor, to prevent systematic, egregious, and continuing harm has made its way systematically into international law, the law of armed conflict, and calls to humanitarian intervention.<sup>60</sup> I have called the principle of human dignity involved one of “equal regard” — an equal regard that must sometimes be backed up by coercive force.

The person who helped to effect the transition from an explicit theological argument to a set of normative claims informed tacitly by theology was, of course, Hugo Grotius, a Dutch Calvinist in his famous *On the Laws of War and Peace*, published in 1625.<sup>61</sup> Grotius took it as stipulated that states

have first and foremost the right to defend themselves. And, tangentially, just as a society of human beings has the right to punish a member who has committed a crime against another, so a [N]ation or a group of [N]ations have the right to punish a [S]tate or ruler that has injured another unjustly.<sup>62</sup>

The theological virtue of charity informed Grotius’ work, hence it has a foundation in God’s commands and calls to humankind, as well as in notions of a *jus gentium*, a secular law of the peoples,

59. See Just Wars or Just More Wars? (BBC Radio Broadcast, Aug. 19, 2004), at [http://news.bbc.co.uk/nol/shared/spl/hi/programmes/analysis/transcripts/19\\_08\\_04.txt](http://news.bbc.co.uk/nol/shared/spl/hi/programmes/analysis/transcripts/19_08_04.txt) (last visited Feb. 21, 2005).

60. See *id.*

61. See HUGO GROTIUS, *DE JURE BELLI AC PACIS* [On the Laws of War and Peace] (A.C. Campbell trans., 1814), available at <http://constitution.org/gro/djbp.htm> (last visited Mar. 29, 2005).

62. CALEB CARR, *THE LESSONS OF TERROR* 79 (2002) (summarizing the position of Grotius). According to Grotius, this right to punish is limited by the rules of civil society. See *id.*

as encoded in Justinian's *Corpus Iuris Civilis*.<sup>63</sup> We see, then, that the cluster of permissions and inhibitions we call just war are forged from the notions of a human nature underlying pre-Christian, Greek, and Latin writers and then the powerful theological jolt to these notions offered by Christianity's account of created and fallen human natures.<sup>64</sup> The theological ambience within which just war theory continues to be played out, to the extent that we believe the innocents of whatever Nation, religion, race, or ethnicity make a claim on us by virtue of our shared natures, is, then, that of *caritas*, neighbor regard.<sup>65</sup> To the extent that natural law says important things about both charity and justice, to that extent it is woven into the warp and woof of just war — so long as one keeps in mind the important caveat that prudence must always be a part of any decisions to go to war.<sup>66</sup>

#### CONCLUSION: DO WE HAVE OUR NATURES YET?

Think back to what I said about theologically grounded notions of human nature and just war. These notions make it possible, even exigent, to enact projects of justice, spurred by *caritas*, that necessitate — or may — the use of armed force.<sup>67</sup> At the

63. See WEBSTER & COLE, *supra* note 46, at 165.

64. See John Witte, Jr., *Law, Religion and Human Rights*, 28 COLUM. HUM. RTS. L. REV. 1 (1996) (describing the role of Christianity in forging notions of natural law); see also Jan Arno Hessbruegge, *The Historical Development of the Doctrines of Attribution and Due Diligence in International Law*, 36 N.Y.U. J. INT'L. L. & POL. 265 (2004) (stating that Grotius derived many of his notions of charity from principles of *ius gentium*).

65. See ELSHTAIN, *LIMITS OF POLITICS*, *supra* note 16, at 39. I have previously noted that:

Friendship . . . is the glue that forges our human ties, it binds husband and wife, brother and sister, friend to friend, citizen to citizen even in the limited and flawed realm of earthly life. . . . Human society in all its aspects is twisted by life within unjust and oppressive earthly dominions and the conceptions under which these dominions order their rule. A Ciceronian definition of a people as a number of persons associated by common acknowledgement of certain rules . . . is inadequate, simply not up to the task of recognizing the work of *caritas*. Rather . . . we must look to an assemblage of persons bound together by common agreement as to the objects of love.

*Id.* See generally AUGUSTINE, *CITY OF GOD*, *supra* note 16, at 593-94, 877-78 (comparing the two loves — *caritas* and *cupiditas* — and celebrating the former's capacity to gather together *all* pilgrims into a perfectly ordered and harmonious enjoyment of God and of one another in God).

66. See James V. Schall, *On the Justice and Prudence of This War*, 51 CATH. U. L. REV. 1 (2001) (stating that war must be entered into with thought and consideration).

67. See AUGUSTINE, *CITY OF GOD*, *supra* note 16, at 866 ("wars are waged with peace as their object").

same time, these notions of human nature and what justifies the use of force impose clear *limits* to what one can or should do in the name of both justice and *caritas*.<sup>68</sup> Just war rejects the notion that in time of war the laws fall absent and this rejection is based in important part on often tacit assumptions about what sorts of creatures we are, hence what can, or should, be done in our names — whether to us or in our behalf.<sup>69</sup>

If we jettison any notion of a *human* nature all bets are off. We can do whatever we want, whatever our techniques make possible.

We move in very deep waters indeed when we take up nature and the natural. If one does not believe that a “natural law” and a stipulated and absolutely clear-cut “policy choice” are linked together inexorably — and I am in that camp — the work one has to do is considerable.<sup>70</sup> For one embraces simultaneously the multiple possibilities of our natures — both limits and openings to transformations consistent with our dignity and with equal regard for all that always, necessarily, fall short of any standard of perfection.<sup>71</sup> Even as perfecting our natures is beyond us, so is perfect justice. In the realm of force, a drive to achieve perfect justice, to create a world of neo-Kantian republics in the liberal-humanist vision of things, may also erode limits to the justifiable use of force; limits, therefore, to what we are permitted to do even in the name of justice.

68. See JAMES WETZEL, *AUGUSTINE AND THE LIMITS OF VIRTUE* 20 (1992) (stating that Augustine disregards standards set by human minds).

69. See ELSHTAIN, *LIMITS OF POLITICS*, *supra* note 16, at 111. It should be noted that St. Augustine taught: war and strife, however just the cause, stir up temptations to ravish and to devour, often in order to ensure peace. Just war is and must remain a cautionary tale of domestic and international order, a story of the requirements and purposeful uses of power and order. In this world of discontinuities and profound yearnings, of sometimes terrible necessities, a human being can yet strive to maintain or to create an order that approximates justice, to prevent the worst from happening, and to resist the seductive lure of imperial grandiosity.

*Id.*

70. See RONALD DWORKIN, *LAW'S EMPIRE*, 95-96, 313-54 (1986) (noting that the term “natural law” can denominate any number of related, yet distinct, legal philosophies and that these various perspectives toward law all hold to the basic natural law tenet that a necessary overlap must exist between law and morality).

71. See AUGUSTINE, *CITY OF GOD*, *supra* note 16, at 471-73 (explaining that the nature of angels and man, both good and bad, is one in the same).