

## Justice, Love and Patriotism: dangerous liaisons

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In his description of the theme of this conference, 'Searching for Roots', the president of the *Apostolat Militaire International* (AMI) indicated a series of serious problems that we as human beings and also Roman Catholic soldiers face today. Among them is what he calls a 'growing nationalism' (...) as a simple answer to complex questions and challenges', and a certain tendency to think that we as a state or a country alone are 'able to solve problems (political, social, economic or cultural) alone'. Later in his paper he distinguishes 'patriotism, the love for your country you live in and serve' from 'nationalism', a concept he does not define but associates – among other things – with 'belligerent changes' to widen your own territory. As a more general advice he suggested that we should search for the roots of our societies as well as the values they are based on. At the same time to search 'for the roots of our belief and faith, given to us as a guideline for a soldier's life in peace and during military missions.'<sup>1</sup>

In my contribution within the framework of these questions I will raise the question if we, as citizens of democratic countries, indeed need patriotism in the sense of 'love' for our countries, and, if so, how it can be distinguished from nationalism. (II) Secondly, I shall ask myself, how (universal) 'justice' and (particular) 'love' relate to each other. This is the domain that I shall call 'dangerous liaisons', in diverse and even incompatible variants. (III) As a kind of prolegomenon I will start with a personal note about my own roots as a citizen of the Netherlands. (I)

### I. *No more heroes?*

I was born eight years after World War II as a son in a family of farmers, and with two uncles who had been sent to Indonesia in 1947 and 1949 for military missions called 'first and second police action' to reestablish Dutch authority during the Indonesian war of independence.

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<sup>1</sup> General Major Norbert Sinn, 'Searching for Roots. Theme of the 2017 Conference and general Assembly of the Apostolat Militaire International in Rome', pp.1 and 2.

After this mission, my uncles had great difficulties to reintegrate in the small village where they were born. They were accustomed in these years to a pretty anarchistic lifestyle in tropical Indonesia. The disciplining and sometimes also killing of rebels was part of their job.<sup>2</sup> Well, to cut a long story short, my generation knew what happened in the Second World War and in Indonesia via books and movies but also – very important – via oral stories that often made a profound impression on us. We were educated in a specific moral sensibility, in what a French philosopher once called *humanisme révolté*, ‘revulsive humanism’. To be distinct from *humanisme admiratif*, which means admiring humanism. While the latter refers full of admiration and pride to the cultural and literary heritage of Europe, the ‘alarmed’ or ‘dismayed’ humanism has as its slogan ‘Never again’: never again imperialistic power politics, bellicism, nationalism, racism and, as a kind of summary of all this, never Auschwitz again.<sup>3</sup>

For many of my generation, myself included, skepticism towards the good old military virtues linked to the nation-state was self-evident. We were skeptical about the consolation of Horace that it is sweet and honorable (*dulce et decorum*) to die for your fatherland, *pro patria mori* – a poem that, after all, was already used in an ironic way by Horace himself.

*No more heroes!*, we sung along with the rock group *The Stranglers*... The only heroes we were inclined to embrace were the ones described by the German essayist Hans Magnus Enzensberger. He wrote a brilliant piece about the so-called ‘heroes of retreat’.<sup>4</sup> In this essay he made a laudatory address to these rulers and man in power who realize that it is time to go, that their regime must make way for something new. Preferably without violence. Heroes of retreat are for example the communist leader János Kádár in Hungary, Michael Gorbatsjov in the USSR, or Frederic de Klerk in South Africa who gave up the regime of Apartheid. Today, and in recent history, we often see examples of the opposite -

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<sup>2</sup> See the comment of Paul H. Kahn, in his *Sacred Violence. Torture, Terror, and Sovereignty*, University of Michigan, 2008: (...) there will always be soldiers who find it difficult, if not impossible, to return from the violence of the front to the domestic order of law.’ (162).

<sup>3</sup> See Alain Finkielkraut, *Au nom de l’Autre. Réflexions sur l’antisémitisme qui vient*, Paris 2003.

<sup>4</sup> Hans Magnus Enzensberger, ‘Die Helden des Rückzugs. Brouillon zu einer politischen Moral der Macht’, in: i.d. *Zickzack. Aufsätze*, Frankfurt an Main: Suhrkamp, 1997, 55-64. See also my ‘No more heroes? De noodzaak van een nieuw soort burgermoed’, in: *Christen Democratische Verkenningen*, Lente 2015, 132-140.

leaders who stick to their power-position to the bitter end. Examples like Mugabe in Zimbabwe, Assad in Egypt, and Maduro in Venezuela or – a little earlier, Mubarak in Egypt and Kaddafi in Libya.

*Ethically* of interest in the skeptical ethos developed by the post Second World War generations was perhaps the fact that it puts the old-fashioned military virtues in perspective. While the Mugabe's and Assad's of this world indulge their merciless repression and massacres in the name of the fidelity to the unshakable principles of the revolution, the fatherland or the defense of their sovereignty, the morality of the post-heroic generations implies a certain rehabilitation of attitudes like adaptability, flexibility, yes even a measure of opportunism and of betrayal of the sacred principles of the Party, the Revolution or the Nation.

As Christians, we also learned that after two world wars, churches should keep a distance from nationalistic passions – most churches are not proud when confronted with the fact that *Gott mit uns* was the text written on the helmets of German soldiers during the Great War, nor when they learn about the *Deutsche Christen* who supported Hitler's revolution with a self-fabricated national-socialist theology.

Well, while I think that we still can learn something from this post-heroic ethos, I realize at the same time that today, Enzensberger's skeptical ethics is perhaps not enough anymore in Europe, given the new unstable geopolitical constellation, the rise of authoritarian leadership in several states surrounding Europe and even in Europe itself, and an erratic presidency in the United States. My intuition tells me that we need a new kind of humanism, a more assertive or *militant humanism*.

So perhaps it is time to think again, to re-reflect on the meaning of patriotism and nationalism, love and justice, and to call to mind our *roots* in dealing with these questions. Perhaps we must even reconsider worn liberal modes of thinking about 'public' justice and 'private' love.

## *II Patriotism and nationalism*

First of all: there seems to be a growing consensus among political philosophers that a democratic constitutional state not only needs *democratic* institutions and *procedures* that guarantee the rule of law, but also a certain *unity* and identity of the political community. In short: a

democratic political community must not only provide for its *legitimacy*, but also for its national *unity*.

This point is first of all made by conservative theorists, for example the well-known British philosopher Roger Scruton. In an essay from 1990 titled 'In defense of the Nation', he criticizes what he calls the 'full liberal theory of the state'. According to this theory, the modern state is a purely political creation, whose job it is 'to provide a framework of authority and a body of laws within which individuals and groups (are) at liberty to live the way they (want).'<sup>5</sup> The *roots* of this liberal theory in European history Scruton can be found partly in the legacy of Christianity and partly in the legacy of Roman law. The political-theological distinction between *regnum* and *sacerdotium*, political and religious community in the end made possible the transition from religious to territorial loyalty, and this transition was subsequently confirmed by the territorial jurisdiction of secular Roman Law. Later, the political legitimacy of this transition could be framed as the legitimacy of a 'social contract.' This implies that no obligations can be imposed on the citizen that are not the result of his own action.

Against this theory, Scruton claims that we find it plausible that 'every political order depends, and ought to depend, upon a non-political idea of membership', and that as citizens, we have obligations we never choose.<sup>6</sup> It is only *on the basis* of this pre-political 'we' that we find it plausible, to think of relations in contractual terms. Therefore, each society is at the same time inclusive and exclusive: it discriminates between inhabitants and foreigners, it establishes privileges and benefits for its citizens, and implicates non-contractual duties and pieties toward future and preceding generations. Aiming at the liberal theory, Scruton writes: 'Contracts are means; membership is always at least partly an end in itself.'<sup>7</sup> Therefore, a political community always embraces a particular 'conception of the good', rooted in language, rituals, culture, history, and sometimes also religion. Without these, social duties are only instrumental, even annoying, they can be cancelled. And especially:

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<sup>5</sup> Roger Scruton, 'In defence of the Nation', in: id., *The Philosopher on Dover Beach*, Manchester 1990, 299-329; 300. See also id., 'Conserving Nations', in: id., *A Political Philosophy*, London: Continuum, 1-32; and idem, *The West and the Rest. Globalisation and the terrorist Threat*, London/New York, 2002.

<sup>6</sup> Scruton, 'In defence of the Nation', o.c., 303.

<sup>7</sup> Scruton, 'In defence of the Nation', o.c., 307.

without this 'end in itself', to lay down your life as a soldier for unknown people becomes an absurdity.

In 1990 already, Scruton is pessimistic about the question, if the idea of the nation he is defending will survive. The nation is under attack, not only from the side of the liberal theory, but also from the side of the adherents of a so-called 'multicultural society' who, in Scruton's view, use the liberal theory to discredit the nation-state. In 2005, when he once again wrote on the subject, his chapter on the nation-state can be read as an intellectual preparation on the Brexit ten years later. 'We in Europe', we read, 'stand at a turning point in our history. (...) the process has been set in motion that would expropriate the remaining sovereignty of our parliaments and courts that would annihilate the boundaries between our jurisdictions that would dissolve the nationalities of Europe in a historically meaningless collectivity, united neither by language, nor by religion, nor by customs, nor by inherited sovereignty and law. We have to choose whether to go forward to have that new condition, or back to the tried and familiar sovereignty of the territorial nation state.'<sup>8</sup>

### *Political patriotism*

It is not necessary to endorse Scruton's anti-European position, to share his view that a political community needs a certain patriotism, a 'First-person plural', and not only a contractual legitimacy.

The point is also made by Charles Taylor, a communitarian political philosopher, yet with a fine-drawn difference that is not irrelevant for our discussion on patriotism, nationalism and justice and their implications for (catholic) soldiers. Taylor emphasizes the *modern* character of the nation state. Such a state presupposes a 'change in the way people imagine belonging'.<sup>9</sup> While in a hierarchical society one belonged to a society via belonging to some component of it (as a peasant, for example, one was linked to a lord who in turn held power from the king), in a modern nation, by contrast, I think of my citizenship as a *direct* relationship to the state that is the object of our common allegiance, unmediated by any of these other belongings. These modes of imagined direct access are, according to Taylor, linked to modern equality and individualism. Modern individualism, as a moral idea, he

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<sup>8</sup> Scruton, 'Conserving Nations', o.c., 1.

<sup>9</sup> Charles Taylor, 'Nationalism and Modernity', in: Id., 81-104; 86.

writes (and I will return to this later), ‘doesn’t mean ceasing to belong at all (...), but imagining oneself as belonging to ever wider and more impersonal entities: the state, the movement, the community of mankind’.<sup>10</sup> In this horizontal, direct-access society it is the ‘will of the people’, the principle of popular sovereignty, that has become the only acceptable basis for any regime. However, popular sovereignty ‘doesn’t prevent it from being used to justify the most terrible tyrannies’.<sup>11</sup> In recent history, also communism and fascism were supposed to emanate from the united will of a conquering people, and I can add that today we see the rise of the so-called ‘illiberal democracy’ and other forms of nationalistic populism as alternatives to representative democracy. Some already talk about ‘the end of the liberal cycle’.<sup>12</sup>

Particularly relevant for our subject is that, according to Taylor, representative democracies based on popular sovereignty asks more from its citizen’s than traditional despotism. It requires that its members be motivated to make contributions in the form of ‘treasure (in taxes) and, sometimes, blood (in war).’<sup>13</sup> It always expects some degree of *participation* in the process of governance. Here, Taylor uses the word ‘patriotism’, in the meaning of ‘a strong sense of identification with the polity, and a willingness to give of oneself for its sake.’<sup>14</sup> But at this point, he differs from a conservative like Scruton. While for the latter, a pre-political identity (common descent, culture, religion) is necessary for a polity, according to Taylor, patriotism needs to be *politically* defined, without being reducible to the instrumentality of a ‘contract.’ As a citizen, I love my fatherland because of the *laws* of my country, just as the ancients did, and that was also the case in the American and French Revolutions. The patriot was one who sought the nation’s freedom. It was only later that nationalism raised his head, for example when the German elite, in opposition to the universality of the French Revolution,

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<sup>10</sup> Taylor, ‘Nationalism and Modernity’, o.c., 87.

<sup>11</sup> Taylor, o.c., 89.

<sup>12</sup> See on ‘illiberal democracy’ Jacques Rupnik, ‘Illiberale demokratie. Das Europäische Dilemma und das Ende des liberalen Zyklus’, in: *Lettre Internationale*, Herbst 2016, 11-15; and on populism Jan-Werner Müller, *Was ist Populismus?*, Frankfurt am Main: Suhrkamp, 2016.

<sup>13</sup> Taylor, ‘Nationalism and modernity’, o.c., 90.

<sup>14</sup> Taylor, ‘Nationalism and modernity’, o.c., 90.

accredited the ideal that 'each society must be tailored to the particular genius of the people', that each people has something like a *Volksgeist*.<sup>15</sup> Beside the need for a political identity – we can mention here also Jürgen Habermas' *Verfassungspatriotismus* – Taylor refers to another reason why especially a modern state must strive for a strong common identity, apart from functional requirements of the modern economy like a certain homogeneity of language, education and culture. This reason refers to the principle of popular sovereignty, and particularly the presence of minorities within a polity. When a minority feels that the common identity of the state does not accommodate them, then 'its members feel like second-class citizens', and 'trouble of some sort must follow'.<sup>16</sup> Beneath this, Taylor underlines at several places in his work that 'the people' also needs to be conceived as a collective unit of deliberation, that 'all voices must be heard'.<sup>17</sup> This is the driving force behind many emancipation movements in modern history: when a certain segment of the population is systematically unheard, like the working class, the marginalized poor, woman, ethnic or linguistic groups etc., 'then the legitimacy of democratic rule in that society is under challenge'.

Perhaps linked to the histories of emancipation in modern democracies, it is remarkable that the necessity of patriotism, of a warm center of identification that transcends individual goals and aspirations, is recently also embraced by a leftist, cosmopolitan thinker like Simon Critchley. In a detailed discussion with Jean-Jacques Rousseau, the author of the '*Social Contract*' (1762), Critchley must – a little reluctantly – admit that Rousseau was right when he stated that every state needs something like a 'civil profession of faith', a 'moral code', in short, a patriotist *Catechism of the Citizen* or 'civil religion'.<sup>18</sup> The rationality of a

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<sup>15</sup> See also Pankaj Mishra, *Age of Anger*, Penguin Random House, 2017, Ned. Vert. *Tijd van woede*, Amsterdam/Antwerpen: Atlas Contact, 2017, especially 5,1, 'Grenzeloos nationalisme', 145-194.

<sup>16</sup> Taylor, 'Nationalism and Modernity', o.c., 92.

<sup>17</sup> Taylor, 'Why we need a Radical Redefinition of Secularism', in: E. Mendicta & J. van Antwerpen (ed.), *The Power of Religion in the Public Sphere*, New York: Columbia University Press, 2011, 34-59; and id., 'Democratic Exclusion (and Its Remedies?)' (oorspr. 1999), in: id., *Dilemmas and Connections. Selected Essays*, Cambridge, Massachusetts & London, England: The Belknap Press of Harvard University Press, 2011, 124-145.

<sup>18</sup> Simon Critchley, 'The Catechism of the Citizen. Politics, law and religion in, after, with and against Rousseau', in: *Law and Humanities*, 2007/1, 79-110; 79. See 82: 'I have come to this conclusion (that a democratic state needs a civil religion, TdW) with no particular joy, as someone with little enthusiasm (in the literal sense of the term) for religion, whether organized or disorganized.'

contract is thus not a sufficient, nor even a reliable guide: 'If you would have the laws obeyed, see to it that they are loved', Rousseau wrote.<sup>19</sup>

*The slide from patriotism to nationalism*

Summarizing, we can say that from Scruton, Taylor and Critchley we learn that a close relationship of individual citizens with a particular *patria* or 'community of fate' (Max Webers *Schicksalsgemeinschaft*) is indispensable in a liberal democracy, but also that it is not easy to separate nationalism and patriotism in a clear way. Taylor talks about 'a sort of dialectic of state and nation. It is not just that nations strive to become states; it is also that modern states, in order to survive, strive to create national alliances to their own measure.'<sup>20</sup> And while Scruton defends the national community and patriotism as historically grown 'social unity' or membership, he distances himself from the 'ideology of the nation' because it is not the task of the state to 'manufacture' the deeper forms of loyalty. Yet, in his own discourse, the dividing line between patriotism and nationalism, crucial as it may be for his position as a conservative who believes in organic development, is remarkable thin and also fit for manipulation. For example, for Scruton, nationalism can be accepted as 'emergency-measure, a response to external threat'. Also 'deportation', and 'forced assimilation', although not morally justifiable, is acceptable for him in emergency-situations.<sup>21</sup>

But, we can ask, isn't the logic of nationalistic rhetoric not exactly what politicians and other actors begin to stress. That our national unity is *threatened*, and that 'exceptional' political measures are necessary to *protect* this unity? Is the *conserving* of national unity not at the same time a form of creating and *inventing* this unity? In closing, in the case of Critchley, the philosopher is a bit reserved and anxious in accepting the 'religious' or 'sacral' dimension of a political community and it is understandable. He published his text on Rousseau in 2007, during the 'war on terror', realizing that the recent interwoven-ness of politics and religion' in the US and elsewhere is 'defined by violence'.<sup>22</sup> We shall see

<sup>19</sup> Jean-Jacques Rousseau, *The Social Contract and other later political writings* (V. Gourevitch (ed.), Cambridge: Cambridge University Press, 13.

<sup>20</sup> Taylor, 'Nationalism and Modernity', o.c., 91.

<sup>21</sup> Scruton, 'In Defense of the Nation', o.c., 300.

<sup>22</sup> Critchley, o.c., 82. See 'Bush's God-talk', in: Hent de Vries (ed.), *Political Theologies*

in a later stage how the distinction between patriotism and nationalism can nevertheless be meaningful in another sense.

*Love and justice*

The last, and for the purpose of my subject most important author I want to discuss here is the American philosopher of right Paul H. Kahn, who broadens our discussion on the need of patriotism/nationalism in a liberal democratic regime to the conceptual pair of 'love' and 'justice'.<sup>23</sup> Just like Taylor, Scruton and Critchley in their emphasis on 'warm' unity beside 'cold' legitimacy, Kahn points out a certain lacuna in the liberal theory of the modern political project. This theory puts *justice* at the center of the liberal state. Such a state understands legal rules to be the object of continuous reevaluation and reform in light of the demands of justice. Justice is also the ambition of the constitutional project upon which a modern state is founded. Finally, it is (in)justice that can inspire revolution, and, as we may add today, sometimes even terrorist actions.<sup>24</sup>

Well, this idea of justice itself appears as the realization of (practical) reason, and we get access to this reason by some variant of the 'veil of ignorance' (J.Rawls). Justice under law, we say therefore, is 'blind', it ignores the identity and character of the person who makes claims. It implies, among other things, that 'morally bad individuals, are as entitled to due process as the saints among us.'<sup>25</sup>

This is the great achievement the Enlightenment, one of the 'roots' we are discussing in this conference. But it is at this point that Kahn introduces a second great theme in our Western cultural inheritance (this time with Jewish and Christian roots), namely *love* and, related to love, *sacrifice*. As human beings, he writes, we want 'not only to live in a world that we observe to be just, but one that we experience as valuable in and of itself'.<sup>26</sup> This desire for a meaning that comes with love does

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<sup>23</sup> Paul H.Kahn, 'Recht en liefde, in: *Nexus* 29, 2001, 49-61. This text was only published in Dutch, as Paul Kahn told me by mail. He was so kind to sent me the original manuscript, 'Law and Love'; I will quote from this version. See also Paul H. Kahn, *Sacred Violence. Torture, Terror, and Sovereignty*, Ann Arbor: The University Of Michigan Press, 2008; and id, *Political Theology: Four New Chapters on the Concept of Sovereignty*, New York: Colombia University Press, 2011; id., 'Het kwaad en het Europees humanisme', in: *Nexus* 50, 2008, 48-60, Dutch translation of 'Evil and European Humanism', in: *Yale Law School*, Faculty Scholarship Series 319, see [http://dfigitalcommons.law.yale.edu/fss\\_papers/319](http://dfigitalcommons.law.yale.edu/fss_papers/319)

<sup>24</sup> Kahn, 'Law and Love', o.c., 4: 'Recognitioin of injustice inspires revolution'.

<sup>25</sup> Kahn, 'Law and Love, o.c., 5.

<sup>26</sup> Kahn, 'Law and Love, o.c., 5.

not concern the problem of unjust law, it is about the *limits* of the law. It is the problem of the relationship of the universal to the particular.

Of course, a (Roman Catholic) soldier would perhaps admit, when I go for a peace-keeping or peace enforcing mission in Afghanistan, Iraq or Mali, it is very important for me to know that my wife or husband, my children, other family, and my friends love me and support me. Love, Kahn writes, 'begins when we find ourselves so linked to others that we cannot imagine ourselves standing apart'.<sup>27</sup> The move from justice to love opens also the possibility of the move from (reasonable) contract to sacrifice. For, loving my family, I do not only put their well-being before that of others, and even above my own well-being. In the end, sacrifice *denies* the autonomy of the self upon which the ideal of legitimate legal authority must stand. That is also the reason why one of the fathers of liberalism, Thomas Hobbes, had difficulties to give a well-founded view to sacrifice your life as a soldier when the state is in danger. Sacrifice has no place in his rational construction of the state since in this construction 'covenants not to defend a man's own body are void'.<sup>28</sup> Sacrifice, on the contrary, has its foundation 'in a self-understanding in which the subject sees his or her identity as nothing apart from the relationship to another'.<sup>29</sup> Therefore also the convergence of love and death: love is always a kind of 'death' of the autonomous self.

### III. *Four dangerous liaisons and clashes*

Here, already, we draw very near to the danger zone, because this self-understanding threatens the liberal mode of thinking we are used to – European citizens perhaps even more than Americans. In this liberal mode, we make clear distinctions between public (contractual) reason about justice on one hand, and private love, nonpolitical private loyalties (such as religion) and individual conceptions of the good on the other. I shall describe four forms of the blending and also clashing of 'love' and 'justice' in the meaning Kahn gave to these terms, which are, I suspect,

<sup>27</sup> Kahn, 'Law and Love', o.c., 6.

<sup>28</sup> Kahn, *Sacred Violence*, o.c., 134: 'If the aim of the political community were to exit the domain of death that is the Hobbesian state of nature, a sacrificial politics would be a logical contradiction.' The quote of Hobbes at p. 199. See also Theo W.A. de Wit, 'Pro patria mori. Sacrificing Life in Service of the Political Community', in: Duyndam, J, Korte, A.M. & Poorthuis, M. (ed.), *Sacrifice in Modernity: Community, Ritual, Identity: From Nationalism and Nonviolence to Health Care and Harry Potter*, Brill: Leiden, 2016, 33-54.

<sup>29</sup> Kahn, 'Law and Love', o.c., 6.

also very relevant in the life of a (catholic) soldier. All of them are dangerous in one or another sense.

1. *Love reinforces justice and vice versa*

The first liaison between love and justice is the very dramatic but, as I indicated, today in Europe also discredited model of *pro patria mori*.<sup>30</sup> The model can also imply revolutionary politics, when we read for *patria* the new *Heimat* of a just and peaceful society in the future. This model is presented by Kahn in several books as the model of the sovereign state and its challengers. Regularly, this state 'places its citizens in a position in which the willingness to sacrifice life stands in a reciprocal relationship to the license to kill.'<sup>31</sup> This is the sovereign ethos of the battlefield: a license to injure and kill is granted to those who suffer the risk of injury and death. Killing, being killed: according to Kahn (but for example also Carl Schmitt)<sup>32</sup> it is a demand that only the state can make on its members – otherwise it is just murder or suicide. The soldier not only defends but even participates in the sovereignty. This state can be challenged by a new instance of sovereignty, for example in the case of a revolutionary organization, striving for a new, truly democratic (for example Kurdish or Palestine) state, a communist state, a 'caliphate' etc. Such an organization also displaces the reciprocity of killing and being killed, characteristic of sacrificing violence. Even a non-violent revolution by a revolutionary movement cannot be successful 'if at the threat of violence the people retreat from the public forum.'<sup>33</sup> Some examples. A few years ago, I saw a more or less formal photograph in a Dutch newspaper of a Palestinian man, trim and neat, with his wife and three small children – it could have been a picture of his wedding anniversary. Then I read the subtitle of the photo: three days ago, this man blew himself up in a bus for the Palestine cause, with many (Israeli) deaths as a result. The photo was a farewell-picture; for his community he was a martyr, and the picture was celebrated as a holy

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<sup>30</sup> See Theo W.A. de Wit, 'Pro Patria mori. Sacrificing Life in Service of the Political Community', in: J. Duyndam, A.M. Korte & M. Poorthuis (ed), *Sacrifice*, Leiden: Brill, 2016.

<sup>31</sup> Kahn, *Sacred Violence*, o.c. 132.

<sup>32</sup> Carl Schmitt, *Der Begriff des Politischen. Text von 1932 mit einem Vorwort und drei Corollarien*, Berlin: Duncker & Humblot, 1963, 3. Aufl, 1991, 46: 'Der Staat als die massgebende politische Einheit hat eine ungeheure Bufugnis bei sich konzentriert: die Möglichkeit Krieg zu führen und damit offen über das Leben von Menschen zu verfügen.'

<sup>33</sup> Kahn, *Sacred Violence*, o.c. 138.

remnant. Kahn reminds us, that 'there has never been a universal condemnation of terror as a form of warfare', and that the suicide bomber is a particular object of respect in much of the world when he acted out of love for his community or revolutionary movement.<sup>34</sup> This stands in sharp contrast to the terrorist who causes injury without exposing himself to reciprocal injury.

Another example of the fusion of love and the violent struggle against injustice we can see in the movie *Bram Fischer*. It is about the South African lawyer Bram Fischer who defended the accused (among them Nelson Mandela and Walter Sisulu) in the so-called Rivonia-trial in 1964. It took place during the years of South African *Apartheid* - the movie is based on these historical facts. In secret, Fischer was also member of the same revolutionary movement as the captured, man accused of subversive violent actions against the policy of *Apartheid*. Also in this movie, we see for a period of time the happy mingling, transition or cross-fertilization of love and justice: Fischer's wife supported him whole-heartedly, knowing that she could lose him at any moment due to the dangerous nature of his adventure. The love between them is more than a 'private' affair, it participates in the struggle for a new society and a new rule of law. This struggle can go 'beyond law', as a series of revolutionary actions it is not legal nor illegal.<sup>35</sup> For the existing order, it is terrorism and criminal behavior, for the revolutionaries, it is fighting for justice, 'worshipping new gods', in the words of Kahn.<sup>36</sup> Particularity and universality go hand in hand here. In the same way, the soldier who defends our democratic state against an enemy, may experience this contiguity between these two kinds of love: the love for his wife, family and friends, and the love for the democratic *patria*, always embodied in his comrades. But, of course, this relatedness is always fragile, endangered by the nature of his job (exposing yourself and others to death and injury), but also by the fragility of patriotic love: you can lose it, or even feel betrayed by your own country.

## 2. *Love against law*

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<sup>34</sup> Kahn, *Sacred Violence*, o.c., 133. See also M. Ignatieff,

<sup>35</sup> J. Derrida, 'Force de loi. Le "fondement mystique" de l'autorité', in: *Cardoso Law Review*, 11/5-6, 920-1045.

<sup>36</sup> Kahn, *Sacred Violence*, 136.

The second model is a core narrative in the history of the West, the *conflict* between love and justice. The prototype is Sophocles' *Antigone*. The model first tells us that there is not only a point of convergence between love and giving up my autonomous self, but also between love and war. Both are, as Kahn writes, 'stubbornly beyond law, both cannot be understood apart from the experience of sacrifice'.<sup>37</sup> Sacrifice: the transformation of my body into an expression of some ultimate meaning: the love for my family, my friends, but also for the historical maintenance of my polity, my *patria*. *My patria* also means: I belong to it, I see myself as part of it. We can only understand this point of convergence, when we accept that politics is not only a means for securing a protected private domain but as much a domain of love as of the enforcement of justice. Here, we come across patriotism again, the warm or 'erotic' center of the state.

But here also we find the birth of a possible *conflict* between love and politics. Sophocles' *Antigone* begins with the dead body of Polynikes lying outside the city's walls. Antigone demands out of respect for family and religion that the body of her brother becomes the object of traditional religious ritual. In the classical tradition of warfare, Kahn explains, defeat was the moment where all men were killed, the woman and children sold into slavery, and the city razed. The people, he writes 'are literary destroyed to prove the emptiness of their faith.'

Of course, today we call that practice genocide, but 'the legal prohibition has hardly done away with the impulse' to destroy our enemies. Kahn illustrates this with the example of the contemporary 'war of terror' in the US. While an ordinary criminal remains a member of the community, the terrorist is to be denied that much recognition. Best of all, 'from the sovereign point of view, would be to "disappear" him, to remove him from the human world of memory. This was no doubt the impetus behind the creation of extrajudicial prisons by the Americans after September 11. The state's end is to leave the terrorist perpetually in the space of sovereignty beyond the walls of law. For the United States, that space was to be Guantánamo.'<sup>38</sup> To be an 'unlawful combatant' means, to be condemned to invisibility – so that he cannot appear as a martyr for his own political faith. No one knows, for example, the grave of

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<sup>37</sup> Kahn, 'Law and Love', o.c., 10.

<sup>38</sup> Kahn, *Sacred Violence*, o.c., 146.

Osama Bin Laden. In short, there is no difference between Kreon and the United States: 'Just as Polynikes is left to be eaten by animals, and so made invisible, the modern state would render terrorists invisible.'<sup>39</sup> Is that acceptable from a Roman Catholic point of view? In an essay on fundamentalism, the German (Roman Catholic) philosopher Robert Spaemann also refers to Sophocles' famous tragedy. In this essay, he makes a distinction between two kinds of fundamentalism, a *religious* or *philosophical* fundamentalism and *political* fundamentalism. According to him, ordinary people are all fundamentalists in the first sense of the term, because we all are people for whom there are things that are holy (*heilig*), something that we are not prepared to give up, in Kahn's vocabulary: because we are not only *rational* but also *loving* people.<sup>40</sup> People who lack these kind of holy values do not stick at anything, they are 'capable of anything'. Spaemann writes. The first form of fundamentalism is a non-political attitude, because the sphere of democratic politics is the sphere of mediation, of breaking the claims of the absolute. Political fundamentalism, by contrast, is totalitarian politics and even nihilism; it judges every single life from the standpoint of its political functionality. For example, if for me human rights are moral symbols of the absolute or of *Das Unbedingte* (Spaemann), I also have to accept that human rights cannot simply be 'implemented', but at the very most be respected. Therefore, Spaemann takes the side of Antigone, for whom there exist a religious duty to bury her brother. 'I am here to love, not to hate', she explains her claim. Kreon may have political reasons of *Staatsraison* to forbid the burying of Polynikes, but his *hubris* is therein, that his calculations do not respect what is older and more fundamental than the political system. This creates a conflict between love and the calculations of justice by the state. So, also for a soldier, there can be a moment where the 'older' and 'more fundamental' duties conflict with the reason of state. So, for the same reason, many Europeans are adverse to the 'disappearance' of prisoners in Guantanamo Bay, because this kind of *Staatsraison* clashes with fundamental duties we owe to every human being – as *imago dei*, we as Christians would add. The Italian philosopher Giorgio Agamben, for

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<sup>39</sup> Kahn, *Sacred Violence*, 146.

<sup>40</sup> Robert Spaemann, 'Das Wort sie sollen lassen stahn. Versuch über den Fundamentalismus', in: *Die Zeit*, 1989

example, refuses to visit the United States since the practices of 'disappearance' in Guantanamo begun.<sup>41</sup>

### 3. *Law against love: the expansion of reasonable justice*

'Both justice and love impel us toward the universal', Kahn writes.<sup>42</sup> In the third and fourth model I will describe the implications of both potentialities. First the expansion of justice at the expense of 'love'. From the perspective of justice, nationality and the boundaries of a concrete political community are irrelevant and irrational. Behind Rawls' veil of ignorance, also the prioritizing of my family is hardly defensible: haven't other people an equally just claim upon me? In the same vein, the precepts of religion can also appear backward and unjust – in my country, the Netherlands, sometimes *each* form of religious education of children is attacked as indoctrination and disrespect for the 'autonomy' of young people. Moreover, is religion not becoming dangerous as soon as it pretends to be more than a question of private choice or individual design? And of course, from the standpoint of justice, especially *war* is a failure of law, a remnant of irrationality.

In line with this reasoning we can establish a liberal philosophy of history towards 'the progressive realization of the liberal rule of law' that is based on what Michael Walzer once named the liberal 'art of separation'. After the separation of the household from the public forum (the Greek achievement), and after the detachment of the church from the legislative chamber (the pre-modern achievement) our modern welfare state separated the market from administrative agency.<sup>43</sup> In the end, we produce the 'new man', tripped of 'irrational' attachments in a world without war, nationality and politics and, of course, without sacrifice.

It was this universal perspective that was criticized by the German thinker Carl Schmitt, because it eliminated the enemy as a *legitimate* political figure. On our mission to a world without war, in a 'war against war', we go out hunting for the last enemies of mankind, who are framed, not as political opponents but as criminals, terrorists and

<sup>41</sup> See Rinse Reeling Brouwer, *Eeuwig leven*, 2016,

<sup>42</sup> Kahn, o.c., 13.

<sup>43</sup> Kahn, 'Law and Love', o.c. 7. See Michael Walzer, 'The Art of Separation', in: *Political Theory* 12/3, 1984, 315-330.

monsters because they are delaying the regime of the universal rule of law.<sup>44</sup> Schmitt was anxious about such a moralizing of enmity – rightly so, I think.

Today, we have a lot of concepts that must be called ‘asymmetric’, which means that they can only be used from one side, such as ‘terrorist’, ‘fundamentalist’, ‘enemy of mankind’, ‘rogue state’, ‘axis of evil’ etc. These concepts presuppose a position as arbiter and judge, and can only function as boomerang in our deeply divided world - dehumanizing calls for dehumanizing.

Therefore Schmitts rejection of the idea of a ‘world-state’ (*Weltstaat*), and his skepticism against a form of post-political global governance because of the ‘immense power’ that is linked to the global economic and technical centralization of this governance.<sup>45</sup> The danger of this model lies in the explosive effects of the moralizing and criminalizing of enmity, and in the end of every form of solidarity with a particular community. The Roman Catholic answer to this model could be the following: in our historical strivings, we cannot assume the task of separating the grain from the weed in a definite way: history does not judge itself.

#### 4. *Grateful love transcends the borders of justice*

Does prudent skepticism towards the perverse ultimate consequences of a global reign of justice implies that we in Europe will be better off by returning to the good old nation-state, to the ‘Europe of the Fatherlands’ as some suggests today? I think we can stick to the universal intent of Roman Catholic doctrine by not striving for the global expansion of rational justice at the expense of particular attachments (‘love’), but the other way around, by beginning to think of ourselves as loving and beloved. Once again, Paul Kahn can help us a little bit. If I cannot think of myself apart from the objects of my love, then ‘I cannot accept the idea that a reason stripped of love can generate the hierarchy of values that should guide my life’.<sup>46</sup> In the end, I did not choose my wife on the basis of justice – we fell in love despite the directions of law. (In my

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<sup>44</sup> Schmitt, o.c., 37.

<sup>45</sup> Schmitt, o.c., 58. See also Hasso Hofmann’s criotical interpretation of Schmitts argument, ‘Die Welt ist keine politische Einheit sondern ein politisches Pluriversum (54-58). Menschenrecht im politischen Pluriversum?’, in: Reinhard Mehring (Hrsg.), *Carl Schmitt, Der Begriff des Politischen. Ein kooperativer Kommentar*, Berlin: Akademie Verlag, 111-122.

<sup>46</sup> Kahn, ‘Law and Love’, o.c., 9.

personal case: because she was a South African, we had to follow a lot of procedures and admin before we were allowed to live together)

Why is it that I cannot explain why I love her, in terms of her qualities?<sup>47</sup>

Kahn gives an interesting answer to that question. He writes: 'Through the particular, we grasp the whole. We love the world that makes itself present through the other. The object of our love links us to the macrocosm'.<sup>48</sup> Love puts in perspective the whole vocabulary of justice, contract, the autonomous self that invests his will etc, because through love, we can experience that 'we are not the source of value in the world; rather, we marvel at the value revealed through love.'<sup>49</sup>

So it is not despite but thanks to my love for particular people, places and communities that I can feel connected with other people who think of themselves as loving and beloved. And it is because of our 'erotic soul' that we will always experience discomfort with ordinary politics that separates citizens from non-citizens, friends from enemies etc.

Recently, an army chaplain told me that the most precious memories of Dutch soldiers who served in a country like Afghanistan often had to do with small incidents in dangerous surrounding areas: they could help a child to find its plaything, or a woman to keep her dignity. At these moments, it seems that 'loving the particular other, the entire world is redeemed'.<sup>50</sup>

Well, on the basis of these experiences, I think, we can distinguish nationalism and patriotism. If nationalism has to do with aversion to or even hatred of the alien other, patriotism is a form of love that wants to connect with every political community. Therefore, Kahn writes, 'love will always destabilize justice' (that is: the concrete configuration of political communities of citizen and non-citizen, friends and enemies), because for love, *sympathy* is the master virtue. But what makes our world a tragic place, he adds, is that also the opposite is true: justice will always destabilize love: we have to make calculations on the basis of justice, sympathy cannot be our only virtue. In our Catholic tradition, we would say: faith cannot eliminate reason, and vice versa.

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<sup>47</sup> See Rudi Visker,

<sup>48</sup> Kahn, 'Law and Love', 14.

<sup>49</sup> Kahn, 'Law and love', 15.

<sup>50</sup> Kahn, 'Law and love', 15.