

Just and Unjust War in the Terrorist Age

Americans have always sought to fight “moral” wars, and this is true once more in the war against terrorism. After September 11, rather than prosecuting an indiscriminant and disproportionate Western counter-jihad against the Muslim world, American political and military leaders have conducted—and the American public has supported—a limited, proportionate, and discriminating attack on terrorist organizations and on the nations that aid and abet them. Whether they realize it or not, Americans have been guided in forming their moral intuitions by a long tradition of Christian reflection on the moral questions that surround the use of force—the just war tradition.

This mainstream teaching in Christian moral theology has perennially faced two competing moral views. The first might be called Machiavellian realism, which rejects the idea that war can be a just and moral enterprise. For the realist, the *resort* to war, when all is said and done, is justified by the requirements of *realpolitik* and is merely an extension of day-to-day politics. And for the realist, the *conduct* of war is, in principle, subject to no moral limitation. The other challenge to the just war tradition is

pacifism, which involves the moral renunciation of violence *tout court*. Between pacifism and realism lies the just war tradition, an understanding of statecraft in which the use of force in the service of justice, order, and peace is both permitted and restrained.

While historically, at least in the past four centuries, the main challenge to the just war moral position has come from some shade of Machiavellianism, in recent decades the challenge to the tradition has come from the pacifist side. Ironically, pacifist objections have frequently been raised by those one might expect to be the principal guardians of the just war tradition—namely, Christian theologians. Here, I will discuss the fundamental contours of the classic just war teaching, suggest why it is relevant to the contemporary war on terrorism, and then defend the tradition against its principal contemporary competitors.

Keith Pavlischek is a fellow of the Center for Public Justice and director of the Civitas Program in Faith and Public Affairs. He is the author of *John Courtney Murray and the Dilemma of Religious Toleration*. A veteran of the Persian Gulf War, he is a colonel in the Marine Reserves.

The classical Christian teachings on the use of force are known by the Latin terms *jus ad bellum* (literally, justice toward war) and *jus in bello* (justice in war). The *jus ad bellum* criteria provide guidance about the resort to war. The *jus in bello* criteria place restraints on the means used to wage even a justified war.

Classically, the *jus ad bellum* requires that before war can be waged there must be legitimate authority, just cause, and right intention. Each of these criteria is related to a fundamental political good: *right authority* is related to the political good of order, *just cause* is related to the political good of justice, and *right intention* is related to the political good of peace. As the tradition developed, other criteria were added to the *jus ad bellum* criteria as prudential considerations to guide statesmen when they contemplated the use of force: Is there a *reasonable chance for success*? Will the overall good exceed the harm done (*proportionality*)? Have other means to redress a harm been attempted (*last resort*)? Can peace among the combatants really be achieved (*the end of peace*)?

Traditionally, the criteria for *just cause* explicitly included one or more of three possibilities: defense against wrongful attack, retaking something wrongly taken, or the punishment of evil. Since the Peace of Westphalia (1648), just cause has been understood in international law almost exclusively as just defense—although in recent years a more expansive concept of just cause has been developed in light of attempts to justify humanitarian intervention for particularly egregious human rights abuses. *Right intention* has since the time of Saint Augustine meant, negatively, that war should not be undertaken on account of implacable hatred, personal glory, or bloodlust. Positively, right intention has insisted that the aim of war is to bring about peace—not a utopian peace, nor the peace

of the new heavens and the new earth, but as Augustine called it, a tranquility of order (*tranquillitas ordinis*) in international relations. *Legitimate authority* classically meant that the right to employ force was reserved to persons or communities with no political superior—that is, to sovereign entities.

Jus in bello consists in the criteria of proportionality of means and discrimination (or noncombatant immunity). The criterion of proportionality of means places



The just war theory was first developed by Saint Augustine in the fourth century.

restrictions on gratuitous and otherwise unnecessary violence. The criterion of discrimination prohibits the direct and intentional targeting of noncombatants.

In light of September 11, we may ask what makes terrorism, from the just war perspective, a particularly grave evil. The answer would seem obvious. Unlike trained and disciplined soldiers on the traditional battlefield, terrorists deliberately attack innocent and defenseless civilians. Those tutored in the just war tradition will denounce terrorism because such actions are morally forbidden by the principle of discrimination of *jus in bello*. What makes the September 11 attack even more egregious than the attack on Pearl Harbor is that the focus of the Japanese attack was at least on

a *military* target. If war against Japan was justified in the former instance, how it is not justified in this one is hard to see. Thus, from a just war perspective, the call for justice—in the form of retribution by the U.S. government against the perpetrators and their allies—is entirely warranted. President Bush’s declaration, “whether we bring our enemies to justice, or bring justice to our enemies, justice will be done,” should be applauded.

But the moral judgment against terrorism must not remain confined to the violation of the principle of discrimination and the targeting of civilians. In fact, to understand the evil of terrorism exclusively through the prism of noncombatant immunity is to make a dangerous moral and political concession. Here, we must turn to the *jus ad bellum* criterion of right authority. In recent years, the criterion of legitimate authority has almost entirely been neglected by theologians advancing claims in the just war tradition. At least among American theologians and philosophers, discussions have centered on such peripheral questions as whether the president can use force without the consent of Congress or whether a nation must first seek international approval for the use of force. While these may be important questions, they fail to address the most fundamental issue and thus obscure the full moral significance of the fight against terrorism.

In asking whether war could be waged justly, Saint Thomas Aquinas began not with just cause, but with legitimate authority, citing as Biblical support *Romans* 13:1–6. By legitimate authority, Aquinas (and classical Christian thought, more generally) was referring to a political authority to which there was no superior. Beginning with Saint Augustine and developing throughout the Middle Ages, Christian thinkers sought to curb violence by declaring illegitimate any use of force by subordi-

nate nobles, private soldiers, criminals, and the Church. When confronted with a militaristic Germanic culture in which princes frequently engaged and gloried in combat for private ends, Christian thinkers repeatedly insisted that warfare was a *public* issue. War could not merely be an extreme tool of private parties but had to be a legal instrument, a part of the coercive power of law itself. Historically and theoretically, securing a public monopoly on the use of force was a necessary (though not sufficient) precondition for a peaceful and civilized society. From this perspective, the freelance terrorism of our time is nothing less than a direct assault on this achievement of civilization. Failure by the United States to act decisively against terrorism in a publicly-authorized way may encourage the proliferation of disorder and barbarism of a kind far worse than the private wars of the so-called “dark ages.”

This is why—contrary to those who want terrorism to be handled exclusively as a criminal matter—we should not hesitate to embrace the term *war* to describe our fight against terrorism, especially when governments actively support terrorist groups in their sovereign territory. As James Turner Johnson, the most important contemporary scholar of just war theory, maintains, the tradition

never distinguished between the use of force by the political community to combat disturbers of justice, order, and peace at home or abroad. The critical distinction made there was between use of force for the public good (*bellum*) and private use of force (*duellum*).... It is, in just war terms, a proper *bellum* for the use of all levels of force as appropriate by the national authority to respond to this profound form of evil-doing.

This distinction between *bellum* and *duellem* suggests why, if left unchallenged, the rise of terrorism may foreshadow a return to the barbarism of private war. In fact, a return to private warfare in the

twenty-first century is far more ominous, since vengeance is no longer fueled merely by distorted notions of private glory and honor. Today the motive is ideological, ethnic, and a religious fanaticism that knows no bounds. And it is now equipped with technologies capable of inflicting truly inhuman carnage.

But it is not just the potential destructiveness of modern terrorism which raises heightened moral concern. Rather, terrorism by its nature aims to undermine the goods of justice, order, and peace which are secured by political authority. In attacking these political goods, terrorism thus attacks every human being who benefits from them. Johnson writes:

While the tradition has allowed for the possibility of a war between two states both seeming, because of the complexity of the issues involved, to be just, the kind of violence we today call terrorism is evil in its very nature, because it attacks the foundations of political community itself. The authority to use force to curb and punish terrorism is thus the same authority that seeks to protect the goods of the political order as such. There is no justice in terrorism, only injustice.

Terrorism comes about as close as is possible to what the old moral theologians called *malum in se*—evil in itself. Thus, we should have no qualms when our political leaders refer to terrorists as evildoers. Far from being irrelevant to the war on terrorism, the classic just war tradition developed in large measure precisely to confront and contain the sort of private violence or private war currently practiced by terrorist organizations of all sorts.

Two forms of pacifism constitute the major contemporary moral challenges to the just war tradition. The first is expressed by the “seamless garment” metaphor made popular by the late Cardinal Bernardin of Chicago. This metaphor is intended to con-

vey the notion that Christian opposition to violence must be all of one piece. It is morally inconsistent, the argument goes, to oppose abortion and euthanasia without also opposing capital punishment and war. After September 11, this form of thinking was evident in a document issued by the Dorothy Day Catholic Worker House in Washington, DC. The statement declared, “Any bombing, anywhere, is a tragedy. Any bloodshed, anywhere, is a tragedy. No war is holy. All war is evil. If we kill as a response to this great tragedy, we are no better than the terrorists who launched this awful offensive. Killing is killing, and killing is wrong.”

The problem with the seamless garment argument is that it fails to recognize a moral distinction between quite different types of coercive force. Conceptually, we can distinguish between three distinct uses of force, whether lethal or non-lethal. First, an act that originates or initiates harm of one’s neighbor is simply illegitimate violence. When such violence is lethal it is called “murder.” This first type of force stands in marked contrast to the two other possible uses of force. The second type involves a personal response to an initial act of violence against one’s self, one’s family, or one’s neighbor. When force is employed in this case, whether lethal or non-lethal, it is typically called vengeance. On one level, such force is reprehensible because it is likely to start a spiral of violence, reprisals, and blood feuds. Nonetheless, it also can be understood to have a certain juridical character. A forceful response to violence is a form of retribution, distinguishable from the original act of violence. The third type is an act of force, either lethal or non-lethal, by a political system with established police and military forces. Rather than allowing the personally offended party to exact vengeance, an established political system makes it possible both to prevent or punish

those who originate acts of violence and to halt acts of personal vengeance. This is why political authority is a human good.

The seamless garment position expressed in the Catholic Worker statement makes no moral distinction between the act of a cold-blooded murderer; a vigilante lynch mob formed in response to a murder; and a deputized sheriff's posse that sets out to arrest and if need be kill the murderer. Because they acknowledge no moral distinction between these different types of violence, the proponents of the seamless garment are led to the morally reductionist conclusion that if "we"—the United States—kill in response to terrorist acts, then "we" are just as evil as the terrorists.

This pacifist moral understanding dissents not only from the tradition of just war thinking but also, in important ways, *from classical Christian pacifism as well*. The classical Christian pacifist position is best articulated in Article 6 of the Schleithem Articles of 1527, widely regarded as the theological consolidation of Anabaptism and an early expression of Mennonite theology:

Concerning the sword we have reached the following agreement: The sword is ordained by God outside the perfection of Christ. It punishes and kills people and protects and defends the good. In the law the sword is established to punish and to kill the wicked, and secular authorities are established to use it.

Unlike seamless garment pacifism, classical Christian pacifism affirmed that public authorities have a mandate from God to do what Christians otherwise are supposedly prohibited from doing. While most versions of orthodox Christianity—Catholic, Lutheran, Calvinist, Anglican—entirely rejected pacifism for good Biblical and theological reasons, the Schleithem version of Christian pacifism at least avoids moral and intellectual incoherence and thus deserves a modicum of moral respect.

The fundamental difference between classical Christian pacifism and the just war views both of the magisterial Reformers and of Roman Catholicism was *not* whether public authorities were authorized to punish evildoers by capital punishment and by waging war. The Biblical witness was simply too perspicuous for any of them to doubt it. Contemporary pacifists are fond of quoting *Romans* 12:14,19, "Bless those that persecute you; bless and do not curse. Do not take revenge, my friends, but leave room for God's wrath," and then leaving it at that. But classical Christian pacifists understood that *Romans* 13 holds governing authorities to be agents of God's wrath, ordained by him to "bring punishment on the evildoer." Moreover, Christian believers are enjoined to submit to the governing authorities not out of fear, but for conscience' sake (*Romans* 13:5). As a result, classical Christian pacifists never suggested that a single word, *violence* or *killing*, could be used equivocally to refer both to an initiation of harm to neighbor and to a retributive response to such an act by public authority. By the reasoning of classical Christian pacifism, no moral equivalence exists between acts of terrorism and the response to such acts by legitimate public authority.

Classical Christian pacifists *did* teach that individual Christians, bound to the higher law of Christ-like love, could not themselves wield the sword. They could maintain a certain degree of moral and intellectual coherence because their pacifism was part of a broader rejection of *all* political activity for Christians. The classical pacifist prohibition against Christians wielding the sword was part of their general prohibition against Christians holding judicial and political office of any kind. By making clear distinctions between the responsibilities of Christians and the divinely ordained responsibilities of political rulers, classical

pacifists avoided the moral reductionism of the modern seamless garment position. Contemporary seamless garment pacifists, however, reject the implications of this radical dualism, usually out of an interest in “being prophetic.” To the extent that contemporary pacifists want to breach this dualism and align the state with the gospel requirement of reconciliation expressed in the Sermon on the Mount, to that extent their policy prescriptions are morally incoherent.

Many contemporary theologians and activists want to reject the apolitical, avowedly sectarian stance of classical Christian pacifism but simultaneously want to reject traditional just war teaching as too belligerent. They have thus sought to create a hybrid out of pacifism and the just war tradition, which has variously been described as “just-war pacifism,” “modern-war pacifism,” “crypto-pacifism,” or the “presumption against war” interpretation of the just war tradition.

This view has gained widespread acceptance in liberal mainline Protestant denominations and among some evangelical Protestants, but it is also reflected in much contemporary Roman Catholic teaching. In their influential 1983 statement *The Challenge of Peace*, for instance, the Roman Catholic bishops of the United States repeatedly asserted that pacifism and just war have equal standing in the tradition of the Church. Moreover, that statement claims that the just war tradition shares with pacifism a common “presumption against war.” Those who defend a more classical interpretation of the just war tradition insist that this claim is historically mistaken and that, practically, it introduces a perverse logic into moral reflection concerning war.

The first problem with the presumption-against-war view is that as an historical matter it simply has no precedent among

the authoritative exponents of the Christian tradition, whether Catholic or Protestant. In *Contra Faustum* 22.74, Saint Augustine asks rhetorically, “What is the evil in war?” He responds by rejecting the notion that war’s evil is “the death of some who will soon die in any case,” adding that, “this is mere cowardly dislike, not any religious feeling.” The real evil of war lies in any evil intent of the warriors or of the political authorities who wage war: “love of violence, revengeful cruelty, fierce and implacable hatred of the enemy, wild resistance, the lust of power, and such like.” But Augustine immediately adds that “it is generally to punish these things, when force is required to inflict the punishment, that, in obedience to God or some lawful authority, good men undertake wars, when they find themselves in such a position as regards the conduct of human affairs, that right conduct requires them to act, or to make others act in this way.”

Saint Thomas Aquinas discusses the question “Whether it is always sinful to wage war?” in a section of his treatise on theology devoted to love—*Summa Theologiae* 2-2, Q. 40. Aquinas, summarizing the medieval tradition, argues that war is not intrinsically sinful, and he holds, as we have already seen, that three things are required to justly wage war: legitimate authority, just cause, and right intention. In agreement with just war theorists before and after him, Aquinas moves from the responsibility of political authorities to guard the peace domestically to their responsibility to protect the commonwealth from external threats. “And as the care of the common weal is committed to those who are in authority, it is their business to watch over the common weal of the city, kingdom, or province subject to them. And just as it is lawful for them to have recourse to the sword in defending that common weal against internal disturbances, when they punish evil-doers (*Ro-*

mans 13:4)... so too, it is their business to have recourse to the sword of war in defending the common weal against external enemies.”

The magisterial Protestant Reformers were in complete agreement on the moral responsibility of political authorities to use lethal force when necessary. Commenting on the Sermon on the Mount, Martin Luther asks, “What does it mean, then, to be meek? From the outset here you must realize that Christ is not speaking at all about the government and its work, whose property is not to be meek...but to bear the sword (*Romans* 13:4) for the punishment of those who do wrong (*1 Peter* 2:14), and to wreak a vengeance and a wrath that are called the vengeance and wrath of God.”

John Calvin is even more explicit concerning the obligations of the “civil magistrate.” While “the law of the Lord forbids killing,” Calvin observes, in order “that murderers may not go unpunished, the Lawgiver himself puts into the hands of his ministers a sword to be drawn against all murderers...” Citing several Biblical examples, Calvin argues that since the “true righteousness” of the civil magistrate is “to pursue the guilty and the impious with drawn sword,” then if magistrates should rather “sheathe their sword and keep their hands clean of blood, while [in a passage most relevant to contemporary terrorism] abandoned men wickedly range about with slaughter and massacre, they will become guilty of the greatest impiety...” For the same reason, kings and their peoples must take up arms to wage lawful wars, “for if power has been given them to preserve the tranquility of their dominion...can they use it more opportunely than to check the fury of one who disturbs both the repose of private individuals and the common tranquility of all?” (*Institutes* 4, 20, 10-11)

It should be evident from these (and countless other) classic texts that the Chris-

tian just war teaching does not begin with a “presumption against war” but rather with a *presumption against injustice* focused on the need for responsible use of force to confront wrongdoing. Force, according to the just war tradition, is a *neutral* instrument that can be good or evil depending on the use to which it is put. The classical Christian writers confirm George Weigel’s observation that from its beginning “just-war thinking has been based on the presumption—better, the classic moral judgment—that rightly constituted public authorities have the moral duty to pursue justice, even at risk to themselves and those for whom they are responsible.” Indeed, the criteria classified under *jus ad bellum* does nothing else than specify the terms under which those in political power are authorized to resort to force.

But the problem with the presumption-against-war position is not merely historical. More importantly, it introduces a certain perverse logic into moral reflection on the use of military force, a perversity that helps account for the irrelevance of most recent academic and ecclesiastical teaching on the ethics of war.

As we have seen, the resort to military force in the just war tradition has historically come to be defined through the following moral concepts: just cause, competent authority, right intention, reasonable hope of success, last resort, the goal of peace, and overall proportionality of good over harm. However, both historically and in terms of the inner logic of the just war idea, the criteria are not all of equal importance. Just cause, competent authority, and right intention have priority because they are immediately oriented to fundamental political goods. The remaining concerns—last resort, proportionality, reasonable chance for success, and the prospects for peace—must be taken seriously; but being prudential tests, they are, as James Turner

Johnson says, “of a qualitatively different character from the deontological criteria” of the first three. Contemporary writers advancing the presumption-against-war position, however, tend to invert these priorities, so that prudential criteria such as last resort (probably the least helpful of the criteria) are presented as being at the center of the tradition.

To draw attention to this inversion of priorities is no mere splitting of academic hairs. The purpose of the just war tradition is not to provide publishing opportunities for academic philosophers, nor is it to provide course material for seminary professors teaching social ethics. Rather, the just war teaching has three quite serious and practical purposes. First, the tradition provides a normative grounding for statecraft, subjecting the use of force to a higher-law ethic. Second, the tradition provides guidance to military commanders, placing their role within the larger context of the moral ends of statecraft. Third, the tradition offers moral guidance for individuals as they conscientiously weigh the question of participation in the use of force and the degree of such participation. For most Americans, it is that last purpose which is most immediately relevant: the just war tradition illuminates the responsibilities of citizens in a self-governing democracy under God.

By inverting the logical priority of the criteria, the presumption-against-war interpretation of the tradition ends up presenting just war as a jumbled collection of abstract moral ideals, utterly disconnected from political and military judgment. Both historically and conceptually, however, the just war approach to the use of force is already in dialogue with the spheres of statecraft and military expertise. Indeed, just war reasoning belongs to, and properly resides with, military commanders and statesmen considering the use of force, not academics. If the mere use of military force

is conceived in the first instance as the “problem” to which avoidance is the preferred solution, then just war reasoning is reduced to little more than a moralistic checklist brought in from the outside, external to the task of statecraft.

Properly, therefore, the judgment as to whether a military operation will be successful (the criterion of reasonable chance for success) or will result in greater good than harm (the principle of proportionality) rests with those who have the competence to render such judgments. Put bluntly, it resides with those who know what they are talking about. In almost every instance, that does not include bishops, theologians, and professors. It is the disorienting inversion of logical priorities in the presumption-against-war teaching that explains why, in recent years, we confront the maddening spectacle of theologians who know virtually nothing about military strategy, force structure, and weapons capability holding forth confidently on the likely or unlikely success of a military operation. It accounts for the frequently heard assertion that pacifists and just warriors share a common commitment to military force as a “last resort,” the only purported difference being that pacifists believe a last resort is never reached—as if that were a minor difference. It also explains how it can be that so many intellectuals can support the use of force in theory, but also always oppose it in practice.

It is thus unsurprising that statesmen and military commanders who must make responsible and speedy moral judgments simply ignore the posturings of the modern pacifists who would be their moral guides. Modern pacifists offer a blanket moral advice that inevitably counsels “nonviolence” or extreme caution in the use of military force. History, of course, is full of examples of nations that have suffered catastrophes

by being overly aggressive and over-extended militarily. This is a lesson from Thucydides' *Peloponnesian War*; it is arguably a lesson America learned from Vietnam. So, the modern pacifist or crypto-pacifist will sometimes get something right. But history also tells us that an insufficiently forceful policy can have disastrous results as well. The classic case is the failure of appeasement in the 1930s, which led to the carnage of the Second World War. The pacifist will *always* get this wrong.

The moral and strategic limitations of pacifism are again evident in our contemporary war on terrorism. It is plausible that the terrorist attacks on September 11 resulted from the United States' failure to respond aggressively after the first attack on the World Trade Center in 1993, or after the bombing of our embassies in Africa in 1998, or after the attack on the *U.S.S. Cole* in 2000. In each instance, you needn't do a lot of research to discover what military response—or rather, lack thereof—the pacifists were urging. It is precisely the “seamless monotony” of the pacifists' moral advice that renders their advice morally useless.

A serious debate is now underway concerning national strategy after the conclusion of the Afghan campaign. How aggressively do we pursue terrorists elsewhere using military forces? Do we seek regime termination in nations that continue to sponsor terrorists, such as Iraq? These decisions must be made by wise, prudent, and moral statesmen. But our statesmen are not likely to heed the policy advice of pacifist professors and clerics who believe, by definition, that military forces should be eliminated, who know little or nothing

about military capabilities and doctrines, and who misrepresent or misunderstand the core teachings of the just war tradition.

Ultimately, the intellectual source of this pastoral confusion lies with the novel contemporary effort to *synthesize* the two mutually exclusive moral positions of pacifism and just war. All such attempts fundamentally distort both traditions and render them logically, morally, and theologically incoherent. Just war thinking begins with the belief that in a fallen world, the use of coercion and force, including the use of lethal force by legitimate public authority, is not only permitted but also morally required under certain circumstances. For governments *not* to use lethal violence to protect the innocent is unjust and dishonors God. The classical pacifist believes that to use force is evil, perhaps in the case of the modern crypto-pacifist a necessary evil, but still an evil. Between these positions, no middle ground exists, and yet that is where the “presumption-against-war” thinkers have sought to build their intellectual house. Because their resulting hybrids are incoherent, they cannot do the practical political and military work that the just war tradition is designed, precisely, to do.

Which leaves us to suggest that that Saint Augustine (and the Augustinians), Saint Thomas Aquinas (and the Thomists), Luther (and the Lutherans) and Calvin (and the Calvinists) are, despite their diverse theological perspectives, more reliable guides to reflection on this great contemporary problem than are the vast majority of our contemporary academic experts. A recovery of the authentic just war tradition should be among our first tasks in these perilous times.