

CAN A WAR AGAINST TERROR BE JUST?

Or, What Is Just War Good For?

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It is widely recognized that we have entered a new era of warfare. With horrible poignancy, on September 11, 2001 terrorism announced that it had come of age. No longer are wars waged between symmetrical powers—state versus state. Now we are immersed in asymmetrical warfare, where states face non-state enemies who are palpably post-modern: trans-national, decentralized, more closely resembling a fog or that mythic beast with multiple and multiplying heads, the hydra, than the traditional more or less well-defined and (at least potentially) containable national enemy. Moreover, this hydra is one given particularly to living amongst and preying upon civilians. In other words, as the smoldering ruins of Ground Zero reminded us, this is an enemy who does not respect the traditional moral parameters of warfare.

The response to this new kind of enemy—the “global war on terror”—has been no less remarkable for the novel directions it has taken warfare.¹ Consider, for example, the strategy of “shock and awe,”² with its stated aim of inflicting the psychological equivalent of the bombing of Hiroshima and Nagasaki on the enemy population; the policy of pre-emptive war as outlined in the US National Security Strategy of 2002³; the illegitimacy of neutrality as implied in President Bush’s address to a joint session of Congress on September 20, 2001: “Either you are with us, or you are with the terrorists”; the collapse of the international principle of national sovereignty and self-determination as the enemy is pursued across national boundaries around the globe; or the softening of international

conventions on war as enemy combatants (and in many cases, civilians) are stripped of the protections of the Geneva Conventions and imprisoned under brutal conditions, often after being “disappeared” to clandestine locations inaccessible to the likes of the Red Cross through the process of abduction called “extraordinary rendition.”⁴ And these are only some of the characteristics of this new manner of waging war. No doubt, much is happening about which we know nothing, given that this form of warfare involves not only more conventional, visible campaigns like those in Afghanistan and Iraq, but also “ghost wars,” fought covertly in ways such that, as President Bush said, we will not know that they have begun or ended.⁵

Accompanying this recognition is the suspicion that these developments have finally rendered the just war tradition obsolete, irrelevant, impossible. In these changed circumstances, the traditional criteria just do not seem to fit. The global war on terror and the demands of waging it successfully defy such antiquated notions like legitimate authority, last resort, and the possibility of distinguishing between combatant and non-combatant.

Put more starkly, are we not now in a perpetual (color-coded) “supreme emergency,” to use Michael Walzer's well-known concept,⁶ one that does not permit us the luxury of the moral purity or “clean hands” that the just war tradition, in more amenable times, afforded? Or, to echo the logic some have used in defense of suspending key protections of the Bill of Rights, surely the just war tradition is not a “suicide pact,”⁷ rigidly binding us to a code of conduct in the face of a vicious enemy that does not share our moral vision of war? Or as the US administration's briefs suggest, does not the “military necessity” of crushing the evil of terrorism overrule the binding character of just war criteria?⁸

The challenges presented to the just war tradition by the current situation are real. For example, as warfare shifts from the nation-state model to conflict with and between non-state actors, the criterion of legitimate authority, which has traditionally conferred the power to wage war upon heads of state, is called into question. Likewise, the current situation appears to many to render the criterion of “last resort” obsolete. After all, it is argued, when facing a purely evil, irrational, nihilistic enemy like a terrorist movement, war becomes the only possible means of response.⁹ In a similar manner, many proponents of the war against terror note the difficulty both in identifying what the successful end of such a war would look like and how to measure the probability of its attainment. Consequently they have effectively replaced this criterion with what might be called a “sincere hope for success.”¹⁰ Lastly, the difficulties the current

situation presents for the criterion of non-combatant immunity are obvious. The predominantly civilian context of this war has led some to suggest that the civilian/military distinction may disappear altogether¹¹ and that prohibitions on practices like torture are anachronistic.

Although the challenges are real, the shadow of suspicion cast over the just war tradition by the current situation is itself not a novel development. The tradition has consistently faced questions concerning its viability since at least the advent of nuclear weapons.¹² Furthermore, public perception notwithstanding, neither is the changed context of terrorism and the global war on terror unprecedented. The just war tradition arose and came into its own before the advent of nation-states. Indeed, it was precisely the variegated threats posed by decentralized bodies of fighting men in the high middle ages—brigands, mercenaries, pirates, and even feudal lords themselves—that prompted the just war tradition to further limit the scope of justified violence by narrowing legitimate authority and enhancing non-combatant immunity.¹³

So, if neither the question put to the tradition, nor the circumstances that currently prompt such a question, are new, then why the generalized sense that the just war tradition is perilously close to being eclipsed? Certainly there is some truth in the claims of those who suggest that the crisis is brought on by certain crypto-pacifist distortions of the tradition that effectively make it impossible to satisfy the criteria. There are, for example, those who assert that any civilian deaths render a war unjust or that there can always be one more intervention before last resort. Likewise, there is certainly some truth in the claims of those who suggest that the mere invocation of the tradition's language is not a sign of the tradition's health but conversely a sign of its brokenness. After all, realists and their public relations apparatus are not above cynically and pragmatically using (parts of) the tradition on behalf of agendas that do not in fact cohere with the tradition.

Yet, these distortions and manipulations are not the essence of the tradition's perceived problem. However these and similar misuses of the tradition contribute to the sense of crisis, they do not get to the heart of the matter. For the tradition's difficulties run deeper than its mere manipulation. The challenge faced by the tradition stems from conflicting accounts of the tradition's end or purpose. The source of the tradition's difficulties is found in two very different accounts of the end of the just war tradition. This is to say, the difficulty facing the tradition stems from how one answers the question, "what is the just war tradition for?" What is its function? What end, what community, does it

serve?

The prevailing answer is that the just war tradition first and foremost serves the state. It is widely accepted that the just war tradition is a theory of statecraft. Typically this means that it is principally concerned with defining the moral responsibilities of states and the politicians who manage them. In its extreme form, the church and all non-politicians are effectively stripped of any legitimate role in just war deliberations on the grounds that the just war tradition is a public policy tool that belongs solely to public policy makers, with the church relegated to the sidelines as a sort of moral values cheerleader.¹⁴ In its more popular form, on display in countless editorials and essays and heard from not a few pulpits and lecterns, the just war tradition becomes a casuistic checklist dusted off on the eve of conflict by which a state's war-making is evaluated by anyone and everyone.

It is just war understood as a theory of statecraft, a public policy instrument for politicians, that finds itself under particular duress in an age of terror. Consider, for example, the challenges that confront the criterion of legitimate authority.

As a theory of statecraft, the just war tradition presupposes the existence of states and of a relation between them. Accordingly, many have interpreted legitimate authority as restricting licit wars to those between states. Hence the difficulty in an asymmetrical situation. When one is facing a non-state actor like Al Qaeda, the traditional criterion of legitimate authority, geared as it is toward states, appears to be rendered obsolete.

This problem, however, is not insurmountable. Some have simply turned this difficulty into an opportunity. The Bush administration, for example, declared that Taliban fighters were not legally entitled to the protections afforded by the laws of war on the grounds that they were members of a non- or failed state. In other words, facing a non-state enemy relinquishes one—in a manner reminiscent of the medieval treatment of infidels—from the constraints of a just war ethic that might otherwise apply. In this way, the tradition does not so much collapse under the weight of changed circumstances as it is interpreted in a permissive manner. The just war tradition delineates those conditions under which limits apply; in the absence of those conditions—in this case in the absence of a legitimate state—the limits do not apply and so a just warrior is free to do what needs to be done.

Others have responded by reinterpreting the criterion to include at least some non-state actors within its purview. Thus, some non-state entities are legit-

imate targets (and, one assumes, initiators) of a just war because they effectively function like states, it is said. Such a reinterpretation is not particularly far-fetched or inappropriate. After all, the tradition itself has slowly been moving in a similar direction as it has carved out a small space for just revolutions.¹⁵

There is another dimension to the challenge faced by the criterion of legitimate authority understood in terms of statecraft that is worth mentioning. It has been suggested that the kind of war that the global war on terror must be if it is to be effective requires such secrecy that no state could publicly make the case for the justness of a given war, with the result that its authority to wage war could never in fact be legitimated. Consequently, the public could not decide one way or the other about the justice, and so their participation in, a given war.¹⁶ What is noteworthy about this argument is what it does not say. It does not claim that the just war tradition is irrelevant, obsolete or impossible. Rather, it argues that the just war tradition is in effect with full force and that the global war on terror fails to measure up and so just warriors may refuse to fight—not because they are secret pacifists, but because they are just warriors who take the tradition seriously.

What conclusions can be drawn from this brief consideration of how just war as statecraft is challenged by current circumstances, and the three very different responses to those challenges? None of the responses concede that the just war tradition is in fact broken, although in at least two cases the tradition's survival depends on its being significantly modified and in the third case it issues in a paralyzing agnosticism about contemporary warfare. Although only one criterion was examined, consideration of other aspects of just war as statecraft would reveal a similar fate. Just war as statecraft survives the crises effected by the changed circumstances of terrorism and a global war against terror, but only by means of significant adjustments that finally may not put the suspicion to rest that the just war tradition is on its last leg. Thus just war as statecraft survives (so far) with a limp.

There is, however, another and older response to the question of the proper function or end of the just war tradition, a different account of what just war is good for. And unlike the preceding answer, this one is not thrown into turmoil by the changed circumstances of terror and a global war against a terrorist organization, perhaps because it is a far more demanding discipline than a politician's policy checklist.

This alternative answer begins with the church. Before there were modern nation states and a modern just war theory, there was just war as an ensemble

of practices that were part and parcel of the discipline of Christian discipleship.¹⁷ And contrary to the claims of many prominent contemporary interpreters of the just war tradition, the medieval just war tradition as a form of Christian discipleship was not a theory of statecraft. Rather it is first and foremost an ecclesial discipline, the end of which is the edification of the body of Christ and the equipping of the saints as a witness to God's kingdom where a just peace rules the day.

Now, it must be quickly added that this does not mean that the just war tradition so construed and practiced has nothing to say to the governing authorities. To the contrary, it remains an account of governance—which is the kernel of truth in the arguments of proponents of just war as “statecraft.” Insofar as it is part of an account of governance, just war as discipleship may or may not entail statecraft. Whether it does depends upon the particular form governance takes in any given epoch, which, in any case always includes more than states because it must include the church. The tradition remains a vision of political ends and the ordering of human community. The shift from public policy checklist to ecclesial discipline means, however, that the primary community to which the tradition speaks is the church and that the guidance the tradition rightly and necessarily offers secular governing authorities in the form of public policy advice and so forth arises out of that primary community and as an expression of that principal end.

As a Christian practice, the just war tradition is deeply implicated in the character of ecclesial communities. The just war tradition only makes theological sense as an expression of the character of ecclesial communities that are concerned daily with justice and loving our near and distant neighbors, as we raise families, interact with friends, encounter strangers, serve the poor and needy, work and worship. In other words, as a form of Christian discipleship the just war tradition is an extension or expression of those virtues that consistently characterize the Christian life, in peacetime as well as war. Which means that embodying the just war tradition entails much more than pulling out a social statement with its checklist of criteria on the eve of a state's military mobilization. Rather it is about inhabiting certain virtues—like justice and courage and temperance and prudence—something graciously made possible through the church's liturgy and preaching and teaching and practices of discipleship.

Thus, the challenge before a people who would be just warriors today is not that of figuring out how the present circumstances alter the checklist or nullify the criteria. The challenge instead is the perpetual one of establishing and sus-

taining those habits and institutions that make the virtuous life possible in season and out, in times of peace as well as war, even in a time of terror and asymmetrical warfare.

To appreciate the difference that approaching the just war tradition as an ecclesial practice that revolves around the character of a community and virtues instead of a public policy checklist makes, consider how just war as Christian discipleship explicates just cause, right intent, and noncombatant immunity. In particular, it is worth noting how it is able to address features of the contemporary situation that create problems for just war as statecraft.

As part of a theory of statecraft, the criterion of just cause has encountered particular difficulties when faced with terror. This is because statecraft holds as sacrosanct the concepts of national sovereignty and self-determination. These concepts make intervention difficult and as a result just cause has been reduced to self-defense.¹⁸ As a matter of statecraft, the only just cause for war is national self-defense. Terrorism and the exigencies of asymmetrical warfare bring these principles into conflict insofar as the pursuit of a non-state entity like a terrorist network almost necessarily requires violating national-sovereignty and may entail a recovery of the older—and still just—notation of offensive war.

Such, however, is not the case with just war as a form of Christian discipleship. This is because the Christian community, constituted as it is by virtues such as charity and fortitude and practices like hospitality, is much more other-directed than modern nation states. Indeed, Christianity has consistently qualified the legitimacy of self-defense, authorizing armed action principally on behalf of the neighbor. Accordingly, intervention and crossing national boundaries presents no particular difficulty for Christianity, and not simply because the church is in fact already present in most lands. Rather, it is because states and statecraft are rightly affirmed only as an aid to loving our neighbors, and never as an obstacle to such love. In this way, war against a terrorist organization as a interventionist and perhaps offensive war (as understood in the older tradition, not as an excuse for preemptive or preventative war¹⁹) presents no intrinsic difficulties.

The challenge to the church that would embody the just war tradition as a form of Christian discipleship in the midst of terror is otherwise and surfaces not in response to some changed context but as part of the perennial challenge to inhabit the virtues that constitute the Christian life. It is the challenge of inculcating the courage that is willing to risk our lives and the lives of our loved ones for the sake of others, even when our immediate interests are not at stake.

It is the challenge of preaching and teaching not pious irrelevancies and assorted self-help nostrums but a Word of justice and love that invites us beyond ourselves. Much is made today in certain circles of churches needing to identify and satisfy the felt needs of target populations. Unfortunately, such a focus is not likely to move us out of our recliners for the sake of our neighbor. In this regard, when the lives of the saints who gave themselves for others are lifted up in our communities and when we encourage service to those in need around us (e.g., the works of mercy) we are contributing to the formation of the kind of people on whom the just war tradition as a form of discipleship depends. After all, if we do not desire justice, if we do not care about our immediate neighbors who are unemployed, uninsured, homeless, battered, etc., it should come as no surprise when the terror suffered by Croatians, Sudanese, Haitians, or Timorese fails to move us. It should come as no surprise that we fail to respond to terror and its sources unless and until it comes crashing into our front door, as it did on September 11, 2001.

The criterion of right intention has also faced tough scrutiny of late. There is widespread skepticism that simple disavowals of revenge coupled with equally simple declarations of a desire for peace adequately embody this criterion. This skepticism is heightened in the midst of a war on terror as it is revealed that some of the terrorists sought today were aided and abetted in the past and that some of the means as well as the allies in this war might themselves appropriately be characterized as terrorist. In other words, just war as statecraft has yet to articulate an account of right intent that is capable of warding off the charge of cynical mendacity or rank hypocrisy.

By way of contrast, just war as Christian discipleship associates right intent not with perfunctory declarations but with the enemy neighbor love and desire for a just peace that distinguishes the ongoing life of the Christian community. Indeed, just war is driven neither by hatred nor by a desire for the death and destruction of the enemy but by the love that desires to bestow the benefits of a just peace upon the enemy.

What makes this account less susceptible to cynical manipulation is its connection to the ecclesial practice of confession. Intentionality is often a difficult matter to evaluate; for this reason it is properly associated with considerations of character and consistency of behavior. Thus, evaluating right intent in waging war includes queries such as: Is this a people who characteristically and consistently seek justice or is their appeal to justice selective? Is justice carried out to completion? Complete justice entails looking forward—how justice will be

implemented after the shooting stops—and backwards—bringing the past before the bar of justice. Here the practice of confession assumes a central place in right intent, as a just war people may be required, as a part of their pursuit of justice, to confess and amend their own failures of justice, even as they seek justice for their neighbors.

So configured, right intent suffers no particular challenge from an age of terror. Whereas the injustice that mars our life tends to be minimized, denied, or ignored in the dominant approach, with the result that claims to wage a war on behalf of justice are frequently met either with deep suspicion or open derision, the recognition of complicity with injustice and terror does not short-circuit just war as Christian discipleship. To the contrary, the confession and amendment of such injustice is an integral part of what it means to wage a just war. In this sense, a war on terror presents opportunities for self-examination and reform of life that might otherwise go unremarked and that may actually increase the likelihood that a just war against terrorists will be successful.

Of course, if the changed context of terrorism presents no particular difficulties to just war as Christian discipleship, there are other challenges that attend this criterion. For example, in light of the demands of right intent, we might ask ourselves, how seriously do we take the call to love our enemies? Do we pray for our enemies or only for “our side”? Can we even name our enemies, or do we shy away from that because it is impolitic, impolite, or offends societal canons of sentimentality? Does the church model and encourage ways of dealing with enemies that neither shy away from addressing problems forthrightly nor simply cut off those with whom we disagree? This is to say, do we model the desire for and pursuit of a just peace between enemies, or do we perpetuate a harsher politics where the winner takes all and the loser is simply silenced or encouraged to leave? Learning to name and deal with enemies on a daily basis is crucial to the formation of a people who can love their enemies in war, and who can confront injustice with a holy anger that does not become hatred, that does not rejoice in the enemy's death but truly desires that they come to their senses and be reconciled in the order of a just peace.

Right intent also presents us with the challenge of confession. Many churches have lost sight of the gift of confession, either practicing it infrequently or practicing it only in the most vague and abstract manner. However, if just war is premised on the intention of justice and yet we know we are not pure in our intentions for justice, examination and confession become central to the practice of just war. Only then can we avoid the charge of hypocrisy and injustice in

our pursuit of justice.

The last criterion to be considered by way of example is that of non-combatant immunity. The difficulty of respecting non-combatant immunity in the midst of terror has prompted several responses from proponents of just war as statecraft. Some recognize the difficulty of waging a war in a largely civilian context and pin their hopes on a technological fix—what we need are more precision weapons. Others acknowledge the weakening of this criterion and simply shift all responsibility for this to the enemy. Still others reinterpret the criterion such that the distinction is no longer between combatants and non-combatants but between those who are deemed a threat and those who are not. These last two moves feature particularly in arguments about the permissibility of torture.

As an ecclesial discipline, the just war tradition finds nothing new in the challenge of terror and a war on terror. Rather, the challenge remains what it has always been, neither technological nor rhetorical (as in adjusting the criterion) but a matter of character. In the face of terror and warfare in a civilian setting the challenge is the old one of forming those who would be soldiers in temperance, such that their response to threats will be appropriately discriminating, and courage, such that they will abide by their convictions in this regard, even when the pressure to ignore them will be great.

These challenges, of course, extend to the whole church as well insofar as we must be willing to put the lives of our loved ones at greater risk so that enemy civilians may be at less risk

Here the other directed character of the Christian life rises again to the fore. Do we resist the appeal of a therapeutic gospel to a self-absorbed culture and instead preach and teach and model a Gospel of exorbitant self-giving for others? Does our life reflect the conviction that in such giving, though we and our loved ones may die, we will not perish? And do we let the governing authorities know that we are indeed willing to bear such costs for the sake of waging war justly?

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Much ink has been spilt on the question, “Can modern war be just?” and in light of the coming out of terrorism, the question has heated up again. But, as the likes of Paul Ramsey and James Turner Johnson never tire of reminding us, there is nothing inherent in the character of modern warfare that renders it intrinsically incapable of being restrained by the just war discipline. This holds as well for a war against terrorists. War remains now, as it always has been, a human act, and as such is subject to human discipline and restraint. Just as

terrorism is not an inevitable response to real or perceived grievance (most aggrieved people do not attempt to fly planes into skyscrapers), so too war that exceeds the discipline of the just war tradition is not an inevitable or necessary response to terror.

Accordingly, the crisis that appears to grip the just war tradition is due less to changed circumstances than it is to problematic ends it is asked to serve. Just war as statecraft, as a public policy checklist, is in crisis, as it has been effectively from its appearance.²⁰ The challenges that terrorism present to the just war tradition are neither new nor unique. In the face of terror, the church, equipped with its discipline of just war, confronts its age-old task of nurturing the virtues that make just war possible, even in the midst of terror—virtues such as justice, temperance, courage and prudence.

These are the same virtues required to navigate peacetime faithfully as well. Whether one is a retiree or homemaker, student or teacher, accountant or mechanic, we are called to be about the business of seeking a just peace for our neighbors. Whether civilian or soldier, in wartime or peacetime, the virtues of justice, prudence, temperance and courage are central to the life of discipleship. In other words, the just war tradition is not first and foremost a public policy checklist but an embodiment of the Christian life. So, what is just war good for in a time of terror? Forming disciples.

Notes

1. It is important to note that this novelty is the result of a trend dating back at least 30 years. See Andrew Bacevich, *The New American Militarism: How Americans are Seduced by War*. (Oxford: Oxford University Press, 2005).
2. Harlan K. Ullman and James P. Wade, *Shock and Awe: Achieving Rapid Dominance* (National Defense University Press, 1996). For their assessment of the invasion of Iraq, see Harlan Ullman, “Shock and Awe Misunderstood” *USA Today* April 7, 2003. Available at: http://www.usatoday.com/news/opinion/editorials/2003-04-07-ullman_x.htm (Accessed February 2, 2006). See also the growing body of literature on what is called “fourth generation” war.
3. *The National Security Strategy of the United States of America* (New York: William Drenttel, 2003).
4. On these matters, see, for example, Karen J. Greenberg, ed., *The Torture Papers: The Road to Abu Ghraib* (Cambridge: Cambridge University Press, 2005).
5. For an account of earlier manifestations of this kind of war, see Steve Col, *Ghost Wars: The Secret History of the CIA, Afghanistan, and Bin Laden, from the Soviet Invasion to September 10, 2001* (New York: Penguin, 2004).
6. Michael Walzer, *Just and Unjust Wars* 2d ed. (NY: Basic Books, 1977), p. 251ff. See also his important discussion of this concept in relation to the war on terrorism in his *Arguing About War* (New Haven: Yale, 2004), p. 251.
7. This was first uttered with regard to the Bill of Rights by Justice Robert Jackson in 1949. For an invocation of the sentiment in the context of the war on terror, see Jean Bethke Elshtain, *Just War*

Against Terror (NY: Basic Books, 2003), p. 97.

8. To be fair to the Administration, it is not so much that the just war tradition is overruled; rather, it appears that to begin with it was never seriously engaged as a discipline in its own right. See, for example, Bob Woodward, *Bush at War* (NY: Simon & Schuster, 2002) and Bob Woodward, *Plan of Attack* (NY: Simon & Schuster, 2004). See, as well, Ron Suskind, *The Price of Loyalty* (NY: Simon & Schuster, 2004). Instead, the tradition is invoked and followed, to the extent that it is, for more pragmatic than principled reasons. For a brief discussion of the pragmatic character of just war theory's triumph, see Walzer, *Arguing About War*, pp. 9-12.

9. See George Weigel, "Moral Clarity in a Time of War," *First Things* 129 (January 2003): 26.

10. Elshtain is an example that immediately comes to mind. See her *Just War Against Terror*, p. 62f.

11. See, for example, William Lind, et al., "The Changing Face of War: Into the Fourth Generation," *Marine Corps Gazette* (October 1989): 22-6.

12. See, for example, James Turner Johnson, *Can Modern War Be Just?* (New Haven: Yale, 1984).

13. James Turner Johnson, *The Quest for Peace* (Princeton, NJ: Princeton, 1987), pp. 7590.

14. See Weigel, "Moral Clarity...", p. 27

15. See Thomas Aquinas, *Summa Theologica* II-II.42.2; Calvin, *Institutes of the Christian Religion* 4.20; Paul VI, *Populorum progressio*, § 31. For a succinct overview of the tradition of revolutionary violence, see Roger L. Shinn, "Liberation, Reconciliation, and 'Just Revolution'," *The Ecumenical Review* 30 (1978): 319-332.

16. See Paul Griffiths' contribution to "Just War: An Exchange," *First Things* 122 (April 2002): 31-36.

17. The break between the medieval and modern just war tradition is described in the work of James Turner Johnson, G. Scott Davis, and John Howard Yoder, among others.

18. This is commented on widely in the literature on both just war and international law.

19. For more on the meaning of offensive war as just war, see Frederick Russell, *The Just War in the Middle Ages* (Cambridge: Cambridge, 1975). See also James Turner Johnson, *Morality and Contemporary Warfare* (New Haven: Yale, 1999), pp. 289.

20. See Michael Glover, *The Velvet Glove: The Decline and Fall of Moderation in War* (London: Hodder and Stoughton, 1982) and John Keegan, *A History of Warfare* (NY: Alfred A. Knopf, 1993).