Just War Theory and the U.S. Counterterror War

By Neta C. Crawford

This article addresses three sets of questions. First, the George W. Bush administration claims that its cause and conduct in counterterror war are just. Such a claim invites moral assessment. How do normative beliefs and ethical concerns affect U.S. conduct in the counterterror war? Is the war just in cause and conduct? Second, many observers argue that warfare is "transformed." How so? And is it possible to fight a just counterterror war in this context? Third, the transformation of war raises new questions for just war theory itself. Is the framework still useful? I argue that it is extremely difficult to fight a just counterterror war given the nature of terrorism and the realities of contemporary warfare. Yet I show that the Bush administration has made an effort to engage in a just counterterror war by meeting the criterion of self-defense and seeking to avoid noncombatant harm. Even so, current U.S. policy and practice in the counterterror war are not just. But any government would have a problem fighting a just counterterror war in the current context; indeed, the utility of just war theory itself is challenged. I discuss 12 conceptual and practical problems that arise at the intersection of just war theory and counterterror war, including the limits of self-defense, preemption, last resort, and discrimination. Despite these problems, I argue that just war theory is a useful method of inquiry into the problems of contemporary war.

> Our nation's cause has always been larger than our nation's defense. We fight, as we always fight, for a just peace—a peace that favors human liberty. . . . Building this just peace is America's opportunity, and America's duty. — George W. Bush[1]
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> The Americans who conduct those operations are a tough and proud bunch. Their cause is a just one. It's to stop terrorists from killing Americans and others. — Donald H. Rumsfeld[2]
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> This is not a linear war; this is not a sequential war. . . . This is a different kind of conflict. This is asymmetric warfare. We have to use all the instruments of national power. — General Richard Myers[3]

The justice of war is a perennial concern of political scientists, theologians, philosophers, warriors, and politicians. In arguing that counterterror war in response to the assaults of September 11, 2001, is just, the Bush administration invites moral assessment. Before September 11, scholars and officials—even within the U.S. Pentagon—debated whether war was changing and, if so, whether old strategies and tactics could meet new realities; that debate has largely resolved into the view that war is transformed. As U.S. Secretary of Defense Donald Rumsfeld wrote, "This will be a war like none other our nation has faced."[4] The U.S. government has also implicitly argued that since war has changed so dramatically, we need to expect and accept different ethical, legal, and military standards, such as preemptive strikes and military tribunals where suspected terrorists may not even know the evidence against them. Thus, apart from practical issues raised by the September 11 attacks and the U.S. military response, the transformation of war raises questions for just war theory and about the justice of the U.S. counterterror war.

Specifically, I address three sets of questions: First, can counterterror wars be just?[5] Second, the Bush administration claims that its cause and conduct in the counterterror war are just. Is that so? How do normative beliefs and ethical concerns affect U.S. conduct? Third, are just war theory guidelines, developed in another age, still appropriate and useful for helping us to reason through these problems?

Realists and other skeptics argue that morality has no place in world politics and, therefore, any evaluation of just war theory and the conduct of the counterterror war is irrelevant. As Hans Morgenthau said, "To know that nations are subject to the moral law is one thing, while to pretend to know with certainty what is good and evil in relations among nations is quite another. . . . On the other hand, it is exactly the concept of interest defined as

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power that saves us both from that moral excess and that political folly."[6] But as even Morgenthau would admit, that does not mean we can ignore the ways that conceptions of morality—even "moral excess" and "political folly"—influence the beliefs and conduct of actors in world politics.

Just war theory thus deserves our attention at this time for three reasons. First, despite claims that ethical concerns have no place in politics, most realists would admit—sometimes to their chagrin—that for good or ill, normative concerns affect at least the rhetoric of states, if not their conduct. The dominant ethical framework with respect to war—taught at military academies and articulated in international law and the U.S. Uniform Code of Military Justice—is just war theory, so it is no surprise that the Bush administration has invoked this tradition. Indeed, moral purpose infuses U.S. foreign policy from the top down, as President Bush emphasized in a West Point address: "Because the war on terror will require resolve and patience, it will also require firm moral purpose. . . . We have a great opportunity to extend a just peace, by replacing poverty, repression, and resentment around the world with hope of a better day. . . . We will work for a just and peaceful world beyond the war on terror."[7] The administration thus very clearly claims that it is acting justly. Yet many of the ethical challenges posed by terrorism and the transformation of war have not even begun to be articulated, much less widely debated, even as the United States and its allies proclaim that they are fighting a just war.

Second, U.S. conduct—in at least the first phase of the counterterror war waged in Afghanistan—appears to have been affected by the categories and proscriptions of just war theory. Yet this has largely escaped analysis by scholars of the use of force. Because the United States promises that its counterterror war will continue beyond Afghanistan and repeatedly asserts a just war logic, these questions of justice will probably not fade from view.[8] Indeed, they are likely to become more urgent and may affect the politics of coalition building and the conduct of the counterterror war in ways that have not yet been fully considered.

Third, analysis of the U.S. counterterror war from the perspective of classical just war theory raises difficult questions for *both* just war theory and the practice of the counterterror war. Indeed, it is commonplace to revisit the adequacy of elements of just war theory with each watershed war and each change in the character of warfare. On such occasions, we sometimes hear pronouncements that just war theory is hopelessly flawed. For example, Jean Elshtain argued after the 1991 Gulf War that "[d]espite the impressive and determined efforts of [proponents], the just war frame is stretched to the breaking point as it can no longer provide a coherent picture of its discursive object—war in any conventional sense."[9] If just war theory is inadequate, as some charge, then it ought to be revised or pushed aside. If, on the other hand, counterterror war is not or cannot be fought justly, because of the transformation of the character of war, then U.S. strategy ought to be reformulated so that military elements of counterterrorism are de-emphasized in favor of the prevention and law-enforcement approaches outlined below.

Since neither the morality of a particular war nor the usefulness of an ethical tradition can be judged in the abstract—"moral reasoning is interpretive, not computational"[10]—throughout this article I shift back and forth between just war theory and the practice of counterterror war, using the Bush administration's counterterror policies as a consistent example. I begin by recalling the main elements of just war theory, so that they are fresh for assessment in the counterterror context. Although the Bush administration bases its claims to justice on self-defense grounds, there is more to just war theory than self-defense. I then highlight some ways that warfare has changed in recent years, to facilitate an evaluation of whether just war theory is still an appropriate framework for shaping and assessing the morality of war. Agreeing with the Bush administration that war is transformed, I argue that this transformation raises important ethical dilemmas and poses new problems from the perspective of just war theory. I show the ways that normative beliefs and concerns have affected the administration's understanding of and conduct in the counterterror war. I assess the adequacy of just war theory itself, raising a dozen questions and problems—both recurrent and novel—posed by terrorism and counterterror wars. The Bush administration has attempted to follow a just war approach in a context where the theory and practice of just wars is deeply challenged. Thus, despite the administration's best intentions, important elements of the U.S. counterterror strategy (as it is currently configured) are unjust when evaluated through the lens of just war theory. Indeed, it may not be possible for any state to fight a just counterterror war. (This does not mean that counterterrorism is not an option, but simply that counterterror war should not be the primary approach.) Finally, although just war theory was developed in another era to constrain different kinds of warfare, and although it is fundamentally challenged by the current conflict, the tradition is still useful because it can help us reason through the novel problems posed by counterterror war.

Just War Doctrine

Despite the fact that just war theory is familiar to many, its main lines of argument bear review. Secular philosophers and theologians gradually developed just war theory over the course of hundreds of years—when there were no nuclear weapons, when combatants could often assume symmetry, and when the Catholic Church played a more prominent role in world politics.[11] The theory was recently revised to analyze guerrilla war and humanitarian intervention. Indeed, many contemporary observers of war use a version of just war theory articulated 20 years ago by U.S. Catholic bishops in response to the problems of nuclear weapons and nuclear war.[12] Advocates of just war theory—from Saint Augustine to Hugo Grotius, to Immanuel Kant, to Michael Walzer, to the U.S. Catholic bishops—have not always agreed on important questions or on whether a particular war was just. Rather, they share an approach to arguing about the justice of war.

Just war theory provides normative content for ethical arguments about the resort to and conduct of war on the assumption, distinct from realism, that morality has a place in international politics—although like realism, it assumes that war is an enduring feature of world politics. Proponents of just war theory and the practice of limited war thus sit uneasily between realists who

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say that war cannot, is not, and should not be limited by moral scruples, and pacifists who view war in nearly every instance as unacceptable. Indeed, because the concept of a "just" war may be considered an oxymoron, Augustine said that "waging war and extending their sway over conquered nations may seem to wicked men to be felicity, but to good men it is seen only as a necessary evil. Since it would be still worse for the unrighteous to lord it over the just, even this necessary evil is not improperly called a kind of felicity."[13] In other words, as bad as war might be, it may still be necessary if it prevents a greater harm. So one must ask two sorts of questions: When is war morally acceptable (*jus ad bellum*)? And how can the most pernicious behaviors of combatants be limited (*jus in bello*)?

In assessing whether war is acceptable, modern just war theorists first ask whether the cause is just. They (and, now, international law) proclaim that wars of aggression are unjust; self-defense is the only unambiguously legitimate justification for the use of force.[14] One may then justifiably reply to armed aggression with force. And one may also, in cases of a credible threat of imminent attack, act preemptively to prevent such a threat from being realized. On the other hand, preventive war, waged to defeat a potential adversary before its military power can grow to rival your own, is not just. The criterion of just cause is related to another, right intention, specifically the pursuit of peace and reconciliation. States may seek to restore peace and the status quo ante, but revenge or "justice" is not a proper aim of war.[15]

Jus ad bellum also contends that war must be the last resort, which entails a search for options other than the use of military force, and the patient application of the nonmilitary methods that might be successful. Force becomes acceptable, in this view, only when other methods will not work. The criterion is clear, but deceptively so. How can we know that all options were tried before force was used? States sometimes use force too quickly, without seriously attempting to use mediation, diplomacy, or economic carrots and sticks. Yet how long should nonmilitary methods of resolving a dispute (e.g., diplomacy or sanctions) be attempted before we can say those options have been exhausted?

According to another *jus ad bellum* criterion, wars should be undertaken only by competent or legitimate authorities, classically understood as sovereign states. Indeed, James Turner Johnson argues that this should be the first criterion that one considers, since only a competent authority can make all the other determinations required by just war thinking.[16] Further, war should be undertaken only if success is probable. And finally, *jus ad bellum* calls for the proportionality of ends—recognizing that even a just war in response to injury does harm and so the overall good of the war should outweigh that harm.

Once war is considered justified, its conduct must be judged according to *jus in bello* criteria: proportionality and discrimination.[17] The proportionality criterion prescribes that the violence be in proportion to the aims of war; gratuitous violence should be avoided. To this injunction, we might add Kant's prudent prohibition of behaviors in war—including assassination, poison, breach of surrender, and the instigation of treason in the opposing nation—that would hurt the prospect of peace: "Some level of trust in the enemy's way of thinking must be preserved, even in the midst of war, for otherwise no peace can ever be concluded and the hostilities would become a war of extermination."[18]

Discrimination is the injunction to avoid injuring noncombatants.[19] Of course, noncombatants are often in danger, and their injury or death is sometimes the unintended consequence of force. According to the doctrine of "double effect," such deaths may be permissible (albeit regrettable) if the military goal of the action was just; noncombatant injuries were unintended; and military effects outweighed the unintended effects on noncombatants. Or as Michael Walzer says, "What we look for in such cases is some sign of a positive commitment to saving [noncombatant] lives."[20]

In sum, although just war theory has evolved, its key elements remain consistent. War is just if the cause and intention are just: namely, self-defense and the promotion of peace. War should be a last resort; it should be undertaken by competent authorities only if there is a possibility of success and if the overall good of the war will outweigh the harm it does. War must also be conducted justly: unnecessary violence should be avoided, and noncombatants should not be deliberately targeted.

There is a tendency to regard just war theory as a simple checklist of *do*s and *don't*s. This arises out of two features of the tradition. First, the complexity of just war theory has often, for the sake of manageability, been rendered into what seems to be a list of necessary or sufficient conditions; at the risk of mangling nearly 2,000 years of moral reasoning, I have summarized the tradition in such a manner in the previous paragraph. Indeed, most contemporary discussions of just war theory do not treat it as a *theory* per se. Second, although the just war framework still exceeds its codification in law, elements of just war thinking have been incorporated into both treaty and customary international law.[21] One can say, then, that this or that law or precept, such as noncombatant immunity, has been met or violated.

But to understand just war theory simply as a checklist misses its underlying coherence. While the just war tradition is not a theory in the sense of being a set of causal arguments based on observations of the social world of war—indeed, true causal arguments within the "theory" are generally lacking—it is a framework for ethical reasoning grounded on the belief in human dignity. In the view of just war theorists, war is an interruption of potential human community, a disruption of peace. Our moral duties to others do not diminish with physical distance and end at geopolitical borders. Killing others, even in self-defense, should not be a capricious act. The conduct of war should always keep in mind the possibility of future peace: "The war must be conducted according to such principles as will not preclude the possibility of abandoning the state of nature existing among states (in their external relations) and of entering into a juridical condition."[22] The just war tradition is thus intended to be a framework for debate and dialogue about the right causes and conduct of war, with the underlying presumption that the burden of proof lies with those who want to wage war and who claim that their war is just. The theory's principles are departure points for reasoning and political argument about *particular* conflicts as a whole and conduct within them. Thus,

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while one can reason abstractly about generic situations, moral judgments about right action must be rooted in the particulars of each case.

Transformation of War

The Bush administration's arguments about its strategy in counterterror war, especially regarding the necessity of preemption, rest on the claim that the nature of war is transformed. Similarly, evaluating counterterror strategy more broadly as well as determining whether just war theory is fundamentally challenged in the contemporary context depends on understanding the character of contemporary war. How has war changed?

War remains the use of military force by political organizations (states, rebel groups, and clans) for political, religious, and economic objectives. But the practices of war are always changing. Military-technical breakthroughs—the introduction of the longbow, gunpowder, or the atomic bomb—altered combatants' understanding of the uses and limits of military force. Social innovations—nationalism, conscription, state building, and, on a more prosaic level, close-order drill—altered mobilization and state capacity. Normative innovations, such as laws of war and conventions on the treatment of noncombatants, altered expectations about conduct. What underlies many of the changes in war are transformations of international political economy: for example, from feudalism to industrial capitalism to globalization. War in turn affects international political economy. Moreover, changes in conceptions of legitimate forms of governance and in understandings of human rights also drive the social and normative innovations in the practice of war.

During the late 1980s and the 1990s, many observers began discussing a "revolution in military affairs": cyber-war, info-war, and smart weapons would change the battlefield environment. But the "revolution"—based on innovations in technology and the organization of the global economy—was also understood as the development of new ideas, modes of organization, and military culture. Further, asymmetries in capabilities could lead to asymmetric conflicts, in which opponents use nontraditional weapons. Accordingly, a major official review of U.S. military strategy concluded:

> We can assume that our enemies and future adversaries have learned from the Gulf War. They are unlikely to confront us conventionally with mass armor formations, air superiority forces, and deep-water naval fleets of their own, all areas of overwhelming U.S. strength today. Instead they may find new ways to attack our interests, our forces, and our citizens. They will look for ways to match their strengths against our weaknesses.[23]

The term *asymmetry* thus captures many of the changes in war aims, combatants, mobilization strategies, and conduct to the point where practices that characterized "modern" war, as it developed among industrial powers in the twentieth century, confront what some call "postmodern" war. The following discussion and summary table outline major characteristics of war over the past 600 years. Admittedly, I cannot convey the complexity of war and its transformation in such a short space; my aim here is to describe some of the main features of war and how it has changed since just war theory was articulated.[24] Further, while there are neat columns in the table, the history of war is more complex. For

Table 1
Characteristics of War, 1400–2002: Aims and Combatants

Eras	Aims	Combatants
Classical: 1400–1647	• spread religion • ensure dynastic succession • conquer territory, acquire colonies and farmland	• mercenaries • cities • members of feudal orders
Early Modern: 1648–1899	• ensure right to trade • consolidate territory and colonize	• states vs. states • states vs. rival claimant to state authority
Modern: 1900–1990	• create political and colonial empires • decolonize • promote ideology	• states vs. states • states vs. rebel groups and guerrillas • regional political alliances • multilateral organizations (e.g., UN and regional organizations)
Postmodern: 1990 to present	same as modern, plus: • intervene for humanitarian purposes • attempt to order the world • promote identities through irredentism and genocide • protect criminal enterprises • resist hegemony	same as modern, plus: • kleptocratic state rulers • heavily armed criminals • paramilitary forces • mercenaries • terrorists

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example, although the number of casualties attributed to terrorism has grown in recent decades, terrorist tactics are far from new; terrorism, the deliberate targeting of civilians for political or religious ends, was practiced by ancient Rome, by thugs in precolonial India, and by the Germans during their occupation of South West Africa a century ago.[25] Yet while there are important continuities, many believe that the character of war has fundamentally changed. As former general and current U.S. Secretary of State Colin Powell sees it, "I fought enemies and prepared to fight enemies on traditional battlefields. Both sides fueled by traditional politics, ideologies, competing ideologies. And now it's a different world . . . it's a new kind of threat."[26] These developments raise the questions of whether changes in the aims, combatants, and conduct of war mean that just war theory no longer applies and whether new ethical concerns are posed.

Aims

Colonial conquest and struggles over dynastic succession were frequent occasions for European wars several centuries ago. In the post-Westphalian period (after 1648), wars for colonies and over disputed territory became more common, as did wars over ideology. More recently, although genocide and humanitarian interventions have long been a feature of world politics, late twentieth-century and early twenty-first-century war aims have increasingly included genocide—in Rwanda and former Yugoslavia—as well as the more praiseworthy motives of halting or preventing gross human-rights violations, as the North Atlantic Treaty Organization (NATO) attempted to do in Bosnia and Kosovo. Indeed, humanitarian interventions are commonly understood as just wars, as Tony Blair argued about the NATO intervention to halt Serbian aggression in Kosovo in 1999: "This is a just war, based not on any territorial ambitions but on values. We cannot let the evil of ethnic cleansing stand."[27]

Advancing the interests of organized crime and bolstering the tenuous rule of illegitimate governments have also become more common war aims. In El Salvador during the 1980s, for example, the government was allied with paramilitary groups that created instability to justify a protection racket. Other conflicts in Latin America and Africa feature combatants whose primary war aims include protecting their illegal business interests, such as cocaine production or raw-materials extraction (e.g., diamonds). And in some conflicts, the aim of combatants seems to be to cause fear, war itself, and a literal schism between cultures. In these instances, unlike conflicts in which aims are more limited, grievances are less amenable to negotiated solution.

Combatants

In the pre-Westphalian era, many sorts of organizations—cities, nomadic groups, crusading religious orders, pirates, mercenaries, and even the Papacy—made war. In the post-Westphalian era, states crushed their rivals and gradually became the preeminent war making institution, followed by rebels, revolutionaries, and coalitions of states sometimes under the legitimating umbrella of international institutions. Just war theory regarded and helped codify the sovereign state as the only legitimate combatant. In the contemporary era, states define their security interests broadly to include political and economic stability, and a handful—including Britain, France, Russia, and the United States—have both

Table 1 (cont.)
Characteristics of War, 1400–2002: Conduct and Mobilization

Eras	Conduct in Battle	Mobilization of People and Material
Classical: 1400–1647	• face-to-face fighting • few rules	• pillage and demand for tribute
Early Modern: 1648–1899	• increased distance between combatants, to hundreds of yards	• development of taxation and conscription • early nationalism as alternative to coercion
Modern: 1900–1990	• faceless combat across enormous distances • mechanized warfare • codification of noncombatant immunity and other laws of war • weapons of mass destruction developed but rarely used • counterinsurgency doctrine developed	• creation of large standing armies • highly developed bureaucracy for taxation and conscription • military/industrial complex • focused nationalism
Postmodern: 1990 to present	• focus on exploiting asymmetries • constant vulnerability to terrorists • return of some close, face-to-face "combat" • recurrent and episodic battles; no decisive engagement • decreasing ability to provide noncombatant immunity • terrorists are parasitic on targets, using their transportation, schools, and technologies	same as modern, plus: • constant mobilization to combat terrorist threat • increasing criminal activity to finance war (e.g., illegal trade in drugs and diamonds) • pillage and tribute increase

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nuclear weapons and the capacity to project conventional power globally.

The variety of politically important combatants has grown in the current era, and in some places in the world, states no longer can crush or control their rivals. Paramilitary organizations, whose relationship to states may be tenuous at best, have proliferated. For example, in 1999 paramilitary groups in East Timor that destroyed much of the infrastructure of the region appeared to be beyond Indonesian government control. Mercenary corporations, such as Executive Outcomes and Sandline International, hired by governments or rebel organizations also played an important role in conflicts in Africa and Europe during the 1990s. Heavily armed criminals and warlords are found in many parts of the world. Armed thugs made genocidal war in Rwanda and Kosovo. Stone-throwing youths resist both Israeli and Palestinian authorities in the West Bank and Gaza. And since the 1980s, regional economic and political organizations, most notably the Economic Community of West African States (ECOWAS), have fielded their own militaries for peace enforcement and peacekeeping missions. In addition, nontraditional combatants are less geographically confined to borders in the postmodern era. The globalization of technology increases the power of relatively weak individuals with few resources to wreak havoc to great effect. Terrorist groups, with or without links to states, and mercenary organizations have thus grown in size, lethality, and sophistication, and have moved from local and regional to large-scale operations.[28] Further, accountability and ease of communication vary between modern and postmodern warriors. States and coalitions of states using force are, more or less, legally accountable to their citizens and to international organizations. By contrast, many new combatants are accountable to a small clique or to no one at all. Additionally, communication for purposes of negotiation and mediation becomes all the more difficult, since some new combatants do not post ambassadors or make binding agreements. Indeed, some combatants do not recognize the legitimacy of their adversaries and will not communicate with them beyond issuing threats and ultimatums.

Conduct

In war, combatants kill or gravely injure one another, or threaten to do so, although the details of the practice have changed along with the technological capacities and organizational cultures of militaries. Even as conventional militaries elaborated rules of engagement and followed laws of war that generally supported a distinction between combatants and noncombatants, the physical distance between combatants gradually grew during the nineteenth and twentieth centuries from rifle-shot length to thousands of miles, thus reducing the vulnerability of attackers while increasing the potential for noncombatants to be injured by inaccurate yet more destructive weapons.

Perhaps the most shocking aspect of postmodern war is the deliberate targeting of noncombatants, a practice that violates long-standing normative beliefs and international laws. Paramilitaries, criminal warriors running protection rackets, armed thugs who melt back into their communities, and terrorists obviously do not distinguish between combatants and noncombatants. All are potential targets.[29] Further, as Walzer suggests, "terrorists" do not have a patent on terrorism—states have used terror tactics as part of their foreign and military policies.[30] During the Second World War, Germans "terror" bombed British civilians, and the United States and United Kingdom bombed Japanese and German cities, killing hundreds of thousands, in a largely unsuccessful effort to break the will of civilian populations.[31] During the Cold War, the superpowers held one another's civilian populations hostage in a nuclear "balance of terror." Both insurgent and state-sponsored terrorism are common in civil conflicts. For example, in Kosovo during the late 1990s, the Kosovo Liberation Army used terrorist tactics, kidnapping and killing Serbian police and their civilian collaborators, while Serbs targeted Kosovar Albanians for rape, removal, and murder.

Nevertheless, there is usually an important difference between terrorist actions of states and those of terrorist organizations. States and revolutionary organizations that aspire to statehood have bombed civilians in times of war for a political-military end in the (probably mistaken) belief that to do so induces surrender. Conversely, while terrorism is usually part of a larger political-military agenda, terrorists strike without warning, occasionally without even taking responsibility, and sometimes with no clear political-strategic theory of victory. In some cases, the aim seems simply to thwart a political resolution of conflict, such as the terror campaigns of Hamas in 1996, bombings by the "Real IRA" in 1998, and violence by paramilitary groups in East Timor in 1999. Terrorists also appear to be increasingly motivated by religion and identity.[32] Indeed, some terrorist organizations appear not to seek decisive battles or to prosecute a war of attrition in which the enemy is gradually killed or their stocks of ammunition used up. Rather, the terrorist's battle is episodic, and campaigns do not seem to have a conclusive end.

To the extent that terrorists hold extreme ideologies (unconstrained by beliefs that respect difference) and are not rooted in political communities, terrorist organizations are unlikely to be constrained by the norms of noncombatant immunity. Thus, their means of waging war may tend toward extremes; unlike guerrilla revolutionaries who seek to form new political communities, small groups of terrorists do not have to justify themselves to domestic populations, and they care little about external approval. Dissenters within terrorist ranks who might favor less extreme means may be expelled or, more likely, killed.

Terrorists also have unusual tactical advantages similar to those of guerrilla armies: they generally do not concentrate their forces and separate them from populations, nor do they amass equipment in large depots or have dedicated ports and airfields. And when deployed, terrorists live among their targets. Conversely, in conventional war defenders can fight from prepared positions, their support is nearby, and they know the terrain and infrastructure. A conventional offense must mount tremendous force to break through defensive lines or go around them. But defenders against terrorism have lost traditional advantages of defense: their "prepared positions" are now "target rich environments" and the infrastructure is no longer only "theirs" but equally available to terrorists. The power plants, businesses, airports, railways, drinking-water reservoirs, and subway stations of urban-industrial

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infrastructure are extremely vulnerable to disruption and destruction, so defenders must spend enormous resources to protect an infinite list of assets. As President Bush said at West Point, "In defending the peace, we face a threat with no precedent. Enemies in the past needed great armies and great industrial capabilities to endanger the American people and our nation. The attacks of September the 11th required a few hundred thousand dollars in the hands of a few dozen evil and deluded men."[33] And while defense against terrorist attack is difficult, counterterrorism is also expensive and difficult since terrorists are hard to find and kill without risking harm to noncombatants. U.S. leaders recognize that these differences in some ways put conventional militaries like the U.S. forces at a disadvantage. As Rumsfeld has repeatedly argued:

> [T]he world's changed. . . . Business as usual won't do it.
>
> There are a lot of implications of that change, and one of them is the need for being swift on your feet, and big institutions aren't swift on their feet. They're ponderous and clumsy and slow, powerful over time, but not deft.
>
> . . . [The terrorist] learns every day. It goes to school on you. It watches how you're behaving and then alters and adjusts at relatively little cost, relatively little time, relatively little training to those incremental changes we make in how we do things.
>
> And our changes tend to be slower, more costly and visible. Their changes can be cheaper, quicker, and for a period—a longer period than in our case—but for a period, invisible.
>
> So there is that advantage as well as the obvious advantage that the attacker has against the defender.[34]

Mobilization

Methods of mobilizing money, soldiers, weapons, and allies have also evolved with changes in the underlying political, social, and economic order. Feudal lords took tribute and collected taxes from peasants at a local level while their mercenary armies pillaged for food. Under feudalism, armed forces, raised for specific campaigns, largely disbanded when those conflicts ended. Early modern governments institutionalized taxation, education, and conscription to support war, and militaries became a symbol of statehood while fostering the bureaucratization that defined and formed the modern state. Colonial occupiers taxed the colonized and, through conscription, made their subjects fight for them. Modern governments preparing to wage mechanized warfare raise, equip, and train large standing armies and nurture military industries.

Because of the vast resources required, modern states must mobilize relatively openly. Moreover, states that expect to fight others using their standing militaries must sometimes move their forces far from their borders. Yet the further modern states move their fighting "tooth" in pursuit of their enemy, the longer their mobilization effort takes, the more cumbersome their logistics "tail" grows, and the less efficient their effort to project power becomes. Of course, great powers may pre-position troops and equipment in other regions, but this is costly—and it potentially heightens the resentment of others and the vulnerability of the pre-positioned forces, as the United States learned with the terrorist bombings of Marine barracks in Lebanon in 1993, of the Khobar Towers military housing facility in Saudi Arabia in 1996, and of the U.S.S. *Cole* in Yemen in 2000.

The new forces—including paramilitaries, those running protection rackets, and terrorists—use different methods of mobilization. Some are financed through contributions, but the bulk of these organizations' money derives from unofficial and illegal economies: the production and trade of illegal drugs, looting, and the sale of valuable natural resources such as diamonds. Recruits, who need not be even minimally educated, are drawn either from the ideologically committed or from populations of the unwilling by kidnapping and threats. Parasitic on the technologies developed by others, guerrillas and terrorists can use both low-technology (chemical fertilizers) and high-technology (nuclear and biological weapons) means to great effect without developing ways of producing either. Indeed, the nonterrorist unwillingly subsidizes terrorist assault by providing the technology and means of delivery, and sometimes the weapons terrorists use. For example, the Japanese terrorist group Aum Shinrikyo had a vast chemical and biological weapons production system but also relied on the research and development of others and used already existing delivery systems. They acquired conventional weapons from Russia, from whom they also attempted to purchase nuclear weapons, and used Tokyo subways in 1995 to deliver sarin, a poisonous gas developed by the Nazis.

Terrorists are the most flexible of the new combatants and have essentially reduced to almost nothing the limits of time and space faced by conventional military organizations. They can project power with greater efficiency than can states with their large militaries, and because they use small numbers of troops who often live among their target populations, they require little logistics support. Terrorists can thus focus their resources on the fighting "tooth" and piggy-back on the civilian transportation infrastructure (planes, ships, mails, and automobiles) of their targets for weapons delivery. Terrorists also have an advantage in surprise—their plans are not telegraphed by the movement of large numbers of troops or the mobilization of resources.

Differences in mobilization and combat in turn imply significant differences in relationship between combatants and their host populations. Modern states require wide social and political support (either tacit or active) to wage war: patriotic nationalism provides the tax base, a minimally educated population with a willingness to volunteer or be conscripted provides the soldiers, and industrial and technological innovation provides sophisticated weapons. However, it is not necessary for guerrillas or terrorists to have wide support, although some terrorist organizations, such as Aum Shinrikyo and al Qaeda, do have significant local and international support and thousands of members. The relatively modest resources of terrorists do not need to be funded by taxes; and while some terrorists are highly educated, terrorists do not require an educated population from which to draw their adherents or recruits. Finally, the populations that "harbor" terrorists will perhaps not even notice their presence since their numbers are usually small and terrorist cells are often dormant.

Indeed, terrorists have such tactical and strategic advantages that one might wonder why terrorism is not more common and more devastating. Terrorist tactics are a common feature of ongoing civil and international wars, but sustained terrorist campaigns are less common. There are several reasons. First, except in extreme

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circumstances, only small numbers of people seem to be willing to kill indiscriminately and with great cruelty. These numbers will be smaller when war is not seen as ongoing and when terrorist group leaders become paranoid and start killing their followers. Second, terrorism is partly self-limiting: suicide bombers kill themselves, and when terrorists destroy the target's infrastructure, it is less available for use in future terrorist attacks. Third, weapons of mass destruction have been controlled by states—until recently, at least. And finally, terrorism by itself has a mixed record in achieving positive political ends.[35] Rather than inducing opponents to back down and bringing the terrorist's cause new adherents, over the long run terrorism often breeds greater resistance in the target and moral revulsion among potential sympathizers. Terrorism thus waxes and wanes, although the number of people it is possible to kill in any one terrorist attack has grown.

In sum, the Bush administration and other advocates of the "revolution in military affairs" are correct; war is transformed. But the threats posed by terrorism are not the only force for change. The nature of the contemporary global economy increases the vulnerability of great powers to terrorism, as their assets and interests are global and understood to be such. War is also transformed because the greatest military power on earth has defined U.S. interests globally while seeking to minimize all the vulnerabilities that accompany a global economic presence by becoming more militarily powerful and flexible.

Although, as Walzer says, "[t]here never was a golden age of warfare when just war categories were easy to apply and therefore regularly applied," the clash of modern and postmodern war characteristic of the contemporary era poses particular problems for just war theory and has implications for understanding the counterterror war from an ethical perspective.[36] First, despite marginal changes made in doctrine and training, contemporary militaries are largely unprepared for postmodern war. The failure of conventional militaries to innovate in the decade following the Cold War may be attributable to organizational inertia and conservative military culture, although no doubt there are now strong incentives to meet the new challenges. But changes in tactics and weapons will still likely be slow, with the consequence that great powers will fight terrorism with older conventional forces, such as B-52 bombers dropping heavy bombs or guided munitions. *Jus ad bellum* discrimination and proportionality criteria are thus difficult to meet, as I discuss below.

Second, because terrorists are potentially always ready to strike, targets of terrorism are likely to be in a constant state of mobilization and preparedness, and thus the line between war and peace will become extremely blurred. Specifically, the mobilization and combat strategies of the new combatants mean that many conflicts lack distinct "battlefields" and "fronts," while the speed of events and technologies places great pressure on leaders for immediate decision making. The nature of terrorism as a sustained campaign is that we never know that it has ended and we must always be ready for it. Preemptive strategy and military preeminence seem to be the obvious remedies in this environment. Terrorism and counterterrorism thus become always and forever war. *Jus in bello* criteria are at jeopardy once we cannot say when war begins and ends. The next section of this article makes these observations more concrete through an examination of the U.S. counterterror war from the perspective of just war theory.

Influence of Just War Principles on the United States

Some in the United States have argued against constraints in the war against terrorism. Senator John McCain, for example, said that the United States should not be too concerned with noncombatant casualties in Afghanistan: "Issues such as Ramadan or civilian casualties, however regrettable and however tragic . . . have to be secondary to the primary goal of eliminating the enemy."[37] However, most top U.S. officials have not articulated this view. Rather, normative beliefs and just war talk permeate official U.S. discourse in the counterterror war, influence how the conflict is understood, affected U.S. conduct in the war in Afghanistan, and is likely to remain a factor as the counterterror war moves into new theaters.

That the just war perspective is ubiquitous is evident in how the attacks of September 11, 2001, were immediately understood and framed. Because the terrorists deliberately targeted and killed thousands of noncombatants in peacetime, the attacks were seen as particularly heinous and "evil" and immediately understood as unjustified aggression. The United States framed its counterterrorism effort in just war terms by making a positive legal and moral assertion of a right of self-defense. Moreover, in arguing that terrorism is a different kind of war, the administration consistently defined preemption as self-defense. As Secretary of Defense Rumsfeld argues:

> The only way to deal with the terrorists that has all the advantage of offense is to take the battle to them, and find them, and root them out. And that is self-defense. And there is no question but that any nation on Earth has the right of self-defense. And we do. And what we are doing is going after those people, and those organizations, and those capabilities wherever we're going to find them in the world, and stop them from killing Americans.[38]

During another interview, he elaborated:

> I will say this, there is no question but that the United States of America has every right, as every country does, of self defense, and the problem with terrorism is that there is no way to defend against the terrorists at every place and every time against every conceivable technique. Therefore, the only way to deal with the terrorist network is to take the battle to them. That is in fact what we're doing. That is in effect self-defense of a preemptive nature.[39]

Further, in terms of *jus ad bellum,* the administration claimed that counterterror war was the last resort. Specifically, President Bush demanded that the Taliban regime turn over al Qaeda before the bombing of Afghanistan began on October 8 and then gave the Taliban a "second chance" to produce bin Laden and other top al Qaeda members a few days after the bombing began. When the Taliban refused to do so unconditionally, war was seen as inevitable.

U.S. conduct in Afghanistan was also ostensibly designed to follow *jus in bello* principles. For example, the United States asserted a distinction between combatants and noncombatants and emphasized its regard for noncombatant immunity. As General

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Richard Myers, chair of the Joint Chiefs of Staff, said: "The last thing we want are any civilian casualties. So we plan every military target with great care. We try to match the weapon to the target and the goal is, one, to destroy the target, and two, . . . to prevent any what we call 'collateral damage' or damage to civilian structures or civilian population."[40] And Rumsfeld said, "I know for a fact that we are just being enormously careful. We are doing everything humanly possible to try to avoid collateral damage. We're focusing everything on military targets."[41] In answering charges that many noncombatants had died in Afghanistan, General Tommy Franks, commander of the U.S. Central Command, said the combat in Afghanistan was "the most accurate war ever fought in this nation's history."[42]

Yet there were noncombatant deaths. When U.S. bombing in Afghanistan accidentally killed civilians and then hit the same Red Cross depot twice in October 2001—destroying food and medical equipment intended for the people of Afghanistan—the distress articulated was greater than if the bombs had merely missed their intended targets. And when it does hurt or kill civilians, the U.S. military implicitly asserts the doctrine of "double effect" by arguing, as Rumsfeld did throughout the U.S. bombing of Afghanistan, that the harm to civilians was both unavoidable and unintended:

> We know that victory will not come without a cost. War is ugly. It causes misery and suffering and death, and we see that every day. And brave people give their lives for this cause, and, needless to say, innocent bystanders can be caught in crossfire. Every time General Myers and I stand before you at this podium, we're asked to respond to Taliban accusations about civilian casualties, much of it unsubstantiated propaganda.
>
> On the other hand, there are instances where in fact there are unintended effects of this conflict, and ordnance ends up where it should not. And we all know that, and that's true of every conflict.[43]

Just war and utilitarian logics are thus intermixed, while a logic of consequences and a denial of responsibility are alternately used. On one hand, this is war—and in war, bad things happen; they are unavoidable. On the other hand, Rumsfeld argues, because the United States suffered so much, it is particularly sensitive to the damage and loss of civilian lives. When Afghan civilians were killed, a sense of remorse was articulated, and the Pentagon repeatedly said it would try both to avoid civilian deaths and to ameliorate any damage with aid. But ultimately, as Rumsfeld said, war is bad and terrible things happen in it.

> As a nation that lost thousands of innocent civilians on September 11th, we understand what it means to lose fathers and mothers and brothers and sisters and sons and daughters. But let's be clear: no nation in human history has done more to avoid civilian casualties than the United States has in this conflict. Every single day, in the midst of war, Americans risk their lives to deliver humanitarian assistance and alleviate the suffering of the Afghan people. . . .
>
> There has never been a conflict where people have not been killed, and this is the case here. There is ordnance flying around from three different sources. It's flying around from us, from the air down; it's flying around from the al Qaeda and the Taliban up, that lands somewhere and kills somebody when it hits; and there's opposition forces and al Qaeda forces that are engaged in shooting at each other.
>
> Now in a war, that happens. There is nothing you can do about it.[44]

By arguing that any noncombatant deaths in Afghanistan should be weighed against U.S. losses, the administration also implicitly articulated the norm of proportionality. But this logic is ironically inverted by the administration: the high number of U.S. noncombatant deaths on September 11 partly excuses Afghan noncombatant deaths. Thus, General Myers said, "though we are concerned about any number of unintended civilian casualties, to be honest, the one number, the one horrific number that stands foremost in my mind, is the over 5,000 men, women and children that were killed on 11 September, intentionally killed by the terrorists."[45] The logic seems to be that Afghani noncombatant deaths are proportional to U.S. losses because they are unintended, whereas al Qaeda deliberately targeted noncombatants. Rumsfeld stated: "But even in the light of this atrocity, the United States will never stoop to the level of our enemies in our response. We will continue to plan and to target and to weaponeer this campaign to eliminate al Qaeda and the Taliban, who support them, while making every effort to avoid harming other victims, specifically the Afghan people."[46]

Thus, key for the Bush administration is the idea that civilian deaths during the counterterror operation were unintended. To deliberately target those who happen to live in countries that harbor terrorists would have been to descend to the level of the terrorists who appear to assume that there are no innocents and that civilians are fair game. The U.S. military appeared to follow the principles of discrimination, double effect, and proportionality while simultaneously disavowing responsibility for noncombatant injury or death. They did this by saying either that they did not directly cause the harm to civilians (it could have been caused by Taliban or al Qaeda bombs) or that even when U.S. bombs were used, the United States was not morally responsible, because al Qaeda initiated the war. As Rumsfeld argues: "We did not start this war. So understand, responsibility for every single casualty in this war, whether they're innocent Afghans or innocent Americans, rests at the feet of the al Qaeda and the Taliban."[47]

Further, the U.S. provision of humanitarian assistance via airdrops (done in part to offset the inability of relief agencies to conduct food deliveries by truck once the war began) was a crucial element of the moral arguments made by the Pentagon. Rumsfeld emphasized, "Every single day, in the midst of war, Americans risk their lives to deliver humanitarian assistance and alleviate the suffering of the Afghan people."[48] Indeed, most of the Pentagon briefings during the war in Afghanistan included the number of humanitarian daily rations dropped that day and the total delivered up to that day. A report that the humanitarian rations might be tainted was used by the Pentagon to highlight moral differences between the United States and the Taliban and to reinforce the self-identity of the Unites States as a moral actor:

> The United States has obtained information that the Taliban might intend to poison humanitarian foodstuffs. The report that we would do that is categorically false. We would never poison any foodstuffs. We are humane people. We want to provide humanitarian assistance

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> to those in need. It's just beyond our comprehension that we would consider poisoning a food source.
>
> But we have obtained information, so I will confirm for you that there are reports that the Taliban might poison the food and try to blame the United States.[49]

Finally, the United States has framed its new preemptive war doctrine—as articulated by the president at West Point and in the country's latest National Security Strategy—as legitimate and in accordance with international law. "For centuries, international law recognized that nations need not suffer an attack before they can lawfully take action to defend themselves against forces that present an imminent danger of attack. Legal scholars and international jurists often conditioned the legitimacy of preemption on the existence of an imminent threat—most often a visible mobilization of armies, navies, and air forces preparing to attack." Since the preparations of terrorists and rogue states will not be visible, the administration argues, "[w]e must adapt the concept of imminent threat to the capabilities and objectives of today's adversaries" and adopt a preemptive strategy.[50] Thus the argument is not simply that preemption is prudent, but that it is legal and legitimate.

In sum, moral arguments and just war reasoning were and remain a crucial part of the U.S. response to the September 11 attacks. The war in Afghanistan and the entire counterterror policy of ridding the world of "every terrorist group of global reach" was framed as a just response to aggression.[51] The U.S. military response was not understood by its planners as massive and indiscriminate retaliation; rather, the U.S. military sought to avoid large numbers of civilian casualties in Afghanistan. The administration's repeated assertions that Islam *per se* is not the enemy suggest that the United States will continue a policy of discrimination as the counterterror war moves to other theaters.[52] The effort to avoid noncombatant harm is praiseworthy. Nevertheless, despite statements invoking just war theory and international law, and despite the effort to avoid noncombatant casualties, the Bush administration has a narrow understanding of the meaning and conduct of a just war.

Twelve Problems at the Intersection of Just War Theory and Counterterrorism

In this section, I discuss 12 problems for just war theory that are posed and illustrated by terrorism, counterterrorism, and the Bush administration's particular strategy in the counterterror war. Problems one through four articulate perennial questions for just war theory that are heightened by the practices of terrorism and counterterrorism. Problems five through nine are more novel issues for the just war tradition that are posed by postmodern war. And dilemmas 10 through 12 are problems posed from outside the just war framework by realist, pacifist, and feminist critics of the tradition.

Perennial Concerns

1. If self-defense is the only legitimate cause of war, then we must ask what self-defense means. What are the limits of "self" in self-defense? On the face of it, self-defense criteria seem clear. When our lives are threatened, we must be able to defend ourselves, using force if necessary. But self-defense has another meaning, a thicker sense, which is that our "self" is expressed not only by mere existence but also by our free and prosperous existence. Even if a tyrant would allow us to live, but not under institutions of our own choosing, we may justly fight to free ourselves from political oppression. James Turner Johnson argues that "we do not have to give an extensive and comprehensive listing of all values that may be protected and in what ranking in order to know *that there are* [emphasis in original] such values; they will be apparent when they are violated or threatened with violation."[53]

But how far do the rights of the self extend? What values may actors legitimately defend with military force? If someone threatens our access to food, or fuel, or shelter, can we use force? Or if they allow us access to the material goods necessary for our existence, but charge such a high price that we must make a terrible choice—between food and health care, or between mere existence and growth—are we justified in using force to secure access to a good that would enhance the self? The modern and postmodern context—where economic interests and vulnerabilities are global, where the moral and political community of democracy and human rights is wider than ever before—tends to enlarge the self-conception of great powers. But a broad conception of self is not obviously legitimate, nor are the values to be defended necessarily apparent.

These questions are not abstract in the current context; rather, as Americans contemplate their status as a global empire, the definition of the self to be defended has become more broadly understood. For example, the U.S. military in its most recent Quadrennial Defense Review defines "enduring national interests" to include "contributing to economic well-being," which itself includes "vitality and productivity of the global economy" and "access to key markets and strategic resources."[54] The goal of U.S. strategy is to maintain preeminence.[55] The 2002 National Security Strategy also fuses ambitious political and economic goals with security: "The U.S. national security strategy will be based on a distinctly American internationalism that reflects the fusion of our values and our national interests. The aim of this strategy is to help make the world not just safer but better."[56] And "[t]oday the distinction between domestic and foreign affairs is diminishing."[57] If the self is defined so broadly and threats to this greater "self" are met with military force, at what point does self-defense begin to look, at least to outside observers, like aggression?

2. If self-defense is legitimate, and so is preemption in cases of supreme emergency, how much evidence is necessary to justify preemption? Preemption is just if one has a warranted fear of imminent attack, the potential attacker has a clear intent to cause injury and is actively preparing to do so, and waiting until the threat is realized greatly increases the risk.[58] In such cases, Walzer argues, "states may use military force in the face of threats of war, whenever the failure to do so would seriously risk their territorial integrity or political independence."[59] Uncertain in any period, the concept of justified fear and the limits of "defense" seem to expand in an era of terrorism and weapons of mass destruction. Indeed, as the administration says, "our best defense is a good offense."[60]

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Vice President Dick Cheney makes such an argument with respect to the threat posed by Iraq: "Many of us are convinced that Saddam Hussein will acquire nuclear weapons fairly soon. . . . Deliverable weapons of mass destruction in the hands of a terror network or murderous dictator or the two working together constitutes as grave a threat as can be imagined. The risks of inaction are far greater than the risks of action."[61] Similarly, the National Security Strategy states: "The greater the threat, the greater is the risk of inaction—and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy's attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively."[62]

Again, how much evidence is necessary to justify preemption? The administration argues that there will be little or no evidence in advance of a terrorist attack. The requirement for evidence is thus reduced to a credible fear that the other has the means and motive for an assault. But fear is omnipresent in the context of a terrorist campaign. And if fear was once clearly justified, when and how will we know that a threat has been significantly reduced or eliminated? The nature of fear may be that once a group has suffered a terrible surprise attack, a government and people will justifiably be vigilant. Indeed they may, out of fear, be aware of threats to the point of hypervigilance—seeing small threats as being large, and squashing potential threats with enormous brutality. The line between self-defense and preemption thus becomes blurred to the point where small threats (which may not risk the territorial integrity or political independence of a state) and "uncertainty" are used to justify preemptive attacks. The threshold for credible fear is necessarily lower in the context of postmodern war, but the consequences of lowering that threshold may be increased instability and the premature use of force.

The new U.S. strategy brings these questions to a fine point. By emphasizing total security on a long time horizon, the administration has elevated potential threats to a status that goes beyond the limited notion of justified preemption in the face of the threat of imminent attack. Indeed, the administration's "preemption" strategy is actually, in large degree, a preventive (early offensive) war strategy that seeks to maintain U.S. preeminence by reducing or eliminating the military capabilities of potential adversaries even before potential rivals have acquired those capabilities—and in the absence of a clear intention and plan to use weapons against the United States. Preventive war strategies are generally considered unjust.

3. The jus ad bellum *criteria of last resort are difficult to meet, and in every war we must ask if all other methods to resolve conflict were tried and failed.* So it is with a war against terrorists and those who harbor them, especially if neither side will communicate, much less negotiate, directly with the other. In fact, it has long been official U.S. policy not to make concessions to, or strike deals with, terrorists.[63] But when we define the world in either/or terms—you are either with us or with the terrorists—last resort is truncated. We never know whether force was really necessary, because it was the only way to deal with the problem.

For example, part of the U.S. conflict with the Taliban after September 11 revolved around whether the Taliban would release bin Laden and other al Qaeda members for trial. The Taliban offered to surrender bin Laden "to a third country" if proof of his involvement in the September 11 attacks was made known. On September 21, 2001, just weeks before the U.S. strikes on Afghanistan began, the Taliban's ambassador to Pakistan, Abdul Salam Zaeef, said: "Our position on this is that if America has proof, we are ready for the trial of Osama bin Laden in light of the evidence."[64] A few days earlier, Taliban Information Minister Qudrutullah Jamal said: "Anyone who is responsible for this act, Osama or not, we will not side with them."[65] The United States rejected the offer and withdrew its promise to provide proof of bin Laden's responsibility for the attacks. On October 14, a few days after the U.S. war in Afghanistan began, President Bush rejected another Taliban offer to give bin Laden to a neutral third country; he said, "[T]here is no negotiation, period."[66] Was the administration at least obliged to pursue a dialogue on this point? Does just war theory give adequate guidance on when and with whom dialogue and negotiation are required?[67]

Further, even if there was no other viable option in the case of Afghanistan, the preemptive strategy adopted by the United States to deal with terrorist threats inverts the principle of last resort. When the Bush administration says in the National Security Strategy that "our best defense is a good offense," it suggests—despite its other statements about nonmilitary elements of the strategy—that preemptive action is preferred and nonmilitary action is only supplementary.[68]

4. Although extremism rooted in moral conviction could be a danger under any doctrine, just war thinking may be used to promote it. Most combatants claim that their war is just. For example, Juan Ginés de Sepulveda used just war theory in the sixteenth century to defend the Catholic crusades and the conquest of Native Americans. Yet in believing that its war is just, one side may ignore the justice of the other side's grievances. President Bush, speaking before a joint session of Congress, took just such a tone: "Freedom and fear, justice and cruelty, have always been at war. And we know that God is not neutral between them."[69] Once states go beyond "interest defined as power," moral certainty may yield to moral exceptionalism. For example, President Bush told West Point graduates:

> Different circumstances require different methods, but not different moralities. Moral truth is the same in every culture, in every time, and in every place. Targeting innocent civilians for murder is always and everywhere wrong. Brutality against women is always and everywhere wrong. There can be no neutrality between justice and cruelty, between the innocent and the guilty. We are in a conflict between good and evil, and America will call evil by its name. By confronting evil and lawless regimes, we do not create a problem, we reveal a problem. And we will lead the world in opposing it.[70]

In other words, once one takes a high moral tone, there is a danger that as the moral stakes grow, the estimation of the other side as a potential interlocutor diminishes. As Robert Holmes argues, "Violence is for the morally infallible. If you are convinced that you alone have truth, there is little recourse but to

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threaten, intimidate, bribe or coerce those who disagree with you if they do not come around to your view—or ultimately if these methods are unavailing, to use force."[71] Or the side claiming justice may believe that if it acts in self-defense, *all* its actions are authorized and excused. Further, if the mission is defined broadly to include the promotion of certain values by the use of force, then self-defense and preemption tend to expand and may lead to military excess as "the search for a perfect or utopian (and perhaps one-sided) peace leads to the unnecessary prolongation and intensification of war."[72]

More Novel Problems

5. How shall we define terrorism? Classic just war theory does not recognize terrorists as legitimate combatants. We distinguish war from violent organized crime by the political objectives of combatants in war. Terrorists use the methods of violent organized crime *and* have political aims. So either just war theory is outdated or terrorism is not war. Further, contemporary scholars of terrorism and policy makers treat terrorism as both war and crime.[73] The definition of terrorism as war (albeit in an unconventional and illegitimate form) implies that military response is legitimate and may be required. As suggested earlier, some terrorists do have war aims—revolutionary terrorists, for example, want to promote their aspirations for a state. However, if some forms of terrorism are not war, but rather violent crime that demands a sociological analysis and a police and judicial response, then a counterterror war may not be justified, especially if other methods of dealing with terrorism might be effective.

The nature of the U.S. response to September 11—a mix of law enforcement, intelligence gathering, financial asset tracking, and asset seizure—illustrates the different options that are available for counterterrorism. Thus, some just war theorists urge distinguishing counterterrorism from war. Walzer suggests pursuing law enforcement more than "real" war.[74] And Bryan Hehir argues, "It is better to forfeit the rhetorical bounce that comes from invoking war and define more precisely what we can and should do. . . . Containing and capturing terrorists is by definition a function of police and legal networks. War is an indiscriminate tool for this highly discriminating task."[75]

6. Once one defines terrorism and counterterrorism as war, self-defense and war expand—spatially, temporally, and conceptually—to near infinity. Terrorism, understood as war, expands the concepts and practice of war temporally and conceptually in part because "the threat of terrorist attack is terrorism."[76] Counterterrorism, conceived of primarily as war, similarly explodes the limits on war because, as Secretary Rumsfeld repeatedly emphasizes about terrorism, "[t]here is no way to defend every where at every time against every technique. Therefore you simply have to go after them."[77]

The inability to protect all assets from terrorism places a premium on prevention, often exclusively defined as preemptive strike: "The only defense against terrorism is offense. You have to simply take the battle to them because everything—every advantage accrues to the attacker in the case of a terrorist. The choice of when to do it, the choice of what instruments to use and the choice of where to do it, all of those things are advantages of the attacker."[78] In other words, as noted above, terrorism seems to be a paradigm case of just fear, which legitimizes preemption at locations potentially very far from one's homeland or any "battlefield." Indeed, there is no longer a battlefield in a traditional sense. As President Bush said at West Point: "We must take the battle to the enemy, disrupt his plans, and confront the worst threats before they emerge. . . . Our security will require . . . a military that must be ready to strike at a moment's notice in any dark corner of the world. And our security will require all Americans to be forward-looking and resolute, to be ready for preemptive action when necessary to defend our liberty and to defend our lives."[79] The spatial and temporal limits to war thus fade away. Only two potential futures remain possible in this view: they attack you or you attack them.

Further, in this view, counterterror war must go on as long as it takes. As President Bush told Congress, "Our war on terror begins with Al Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated."[80] Secretary Rumsfeld said that "we intend to pursue it [the war] until such time as we're satisfied that those terrorist networks don't exist. That they have been destroyed."[81] Indeed, in the months following September 11, the United States identified more than 60 countries that harbored al Qaeda and international terrorists, and then began counterterror or training operations to assist other governments in their wars against terrorist and insurgency groups in the Philippines, Yemen, Indonesia, and the former Soviet Republic of Georgia. But because terrorists do not need enormous assets to operate and have great tactical advantages, one can never be sure that all terrorist networks are destroyed and that the threat is eliminated. Constant threat means constant mobilization, which is likely to feed a cycle of fear and a heightened sense of vulnerability. Moreover, the military counterterror mission—preemptive annihilation of a terrorist threat—blurs into other preemptive and preventive military missions, specifically counterproliferation of weapons of mass destruction and regime change in "rogue" states.[82]

Counterterror war may also blur the institutions of war and peace. Homeland security and constant mobilization militarize the entire society, so that the distinction between combatants and noncombatants loses sharpness. And military institutions may appear to be the best tool for many jobs, including dispensing legal justice. Statements such as, "We have to fight the terrorists as if there were no rules, and preserve our open society as if there were no terrorists," by Thomas Friedman, reflect a futile hope to prevail against terrorism without having freedoms curtailed.[83] If mobilization and war are constant because the state is always in imminent danger, there is less room to deliberate about resort to arms or about the conduct of a counterterror war. The presumption becomes that the war is legitimate. Critical discourse about its legitimacy or conduct may be seen as weakening the war effort, and advocates of war will seek to preempt criticism of it. Yet such critical evaluation is essential for the task of moral evaluation and the requirements of prudence.

7. The jus ad bellum *criterion of undertaking war only if there is a likelihood of success and if war is proportionate to the stakes involved*

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is not clearly met by a counterterror policy that emphasizes military action. One can only say *ex ante* that a war is likely to succeed if the theory of victory is plausible. This fact raises two questions. Could any military strategy against terrorism succeed? And is the U.S. strategy, as a particular example, likely to work? There are three main elements to the U.S. theory of victory: (1) defending U.S. assets to the greatest extent possible with homeland security measures, (2) making it difficult for terrorists to operate, by "[d]rying up their money, arresting people, interrogating people, [and] gathering intelligence,"[84] and (3) hurting terrorists and those who harbor them militarily so that they are killed or captured or they give up.

Prior to the September 11 attacks, the United States emphasized what might be called the frustration effort (apart from the air strikes in response to the embassy bombings in Africa); since September 11, the United States has relied on the military leg of its counterterror strategy. The strategy is both destruction of terrorist assets and victory through intimidation. The military element of U.S. strategy in Afghanistan, for example, was to attack the Taliban and al Qaeda with enough force so that they "collapse from within."[85] Rumsfeld asserted, "Our goal is not to demystify things for the other side. . . . The goal is to confuse, it is [to] make more difficult, it is to add cost, it is to frighten, and it is to defeat the Taliban and the al Qaeda."[86] Yet the military part of the strategy may at best be a modest success; and at worst, counterproductive. Advocates of retaliation and war against terrorists assume that those who are attacked will be afraid—and that the fearful and injured will back down. But the fearful rarely capitulate because of bombing campaigns; neither the Taliban nor al Qaeda did so. Indeed, although the numbers are uncertain, many among the Taliban and al Qaeda did not die or quit—they simply attempted to vanish in order to live to fight another day. In other words, while individual terrorists may die and governments may topple, terrorists may escape, regroup, and recruit. The U.S. administration has also admitted that although the Taliban may be defeated, it is much harder to get to the terrorists themselves. As with the technical knowledge of how to build weapons of mass destruction, it is impossible to put the terrorist genie back in the bottle by force alone.

Therefore, a more credible theory of victory cannot be predicated on the questionable strategy of changing terrorist minds through the "persuasive" power of fear.[87] Military victory is likely only if terrorists are physically contained, detained, or killed. A U.S. military assault that fails to kill or apprehend many terrorists and is thought to have harmed many noncombatants may only increase the resentment and resolve of other terrorists and swell the ranks of potential terrorist recruits. It is only the last element of the Bush administration's strategy—the law enforcement approach—that appears to have a likelihood of lasting success, but the military part of the effort has taken precedence in the U.S. counterterror effort, at least in the short term. I return to the question of a potentially more effective counterterror strategy in the conclusion of this article.

8. The fact that the military elements of U.S. counterterror strategy may be unsuccessful at best and counterproductive at worst is related to the problem of discrimination in combat. Discrimination becomes more difficult in the context of postmodern counterterror war.[88] Specifically, how does one conceptually and militarily distinguish combatants from noncombatants if the former are mostly dormant and are passively supported by a surrounding population? If, as I suggest, counterterror war tends to be waged everywhere, all the time, the conceptual distinction between combatants and noncombatants, already difficult to make, grows even more fuzzy, as does the ability to distinguish physically between terrorists and noncombatants. So even though terrorist organizations may have only a few thousand adherents residing among a population of millions, an entire country may become the focus of retaliation for terrorism.

We see the difficulty of discrimination in the Bush policy of equating terrorists and "those who knowingly harbor or provide aid to them."[89] The Bush administration has correctly claimed that the terrorists who attacked the United States on September 11, even in their assault on the Pentagon, killed and injured innocent noncombatants. But in saying, as President Bush does, that "[e]very nation in every region now has a decision to make. Either you are with us or you are with the terrorists," the United States has turned everyone in nations where terrorists reside into potential combatants or targets.[90] By targeting and vowing to "end" states that "harbor" terrorists—"we make no distinction"[91]—the United States ultimately violates the principle of discrimination, although equating those who harbor terrorists with terrorists does solve the problem of finding a legitimate "state" target for counterterror war. Because discrimination has become so conceptually difficult, it is easy for the Bush administration to move to this black-and-white view of the world. There can be no conversation or diplomacy with those who hold a different view. When the Taliban offered in late September and early October 2001 to give bin Laden up to a third party for trial, the offer was insufficient because the United States could no longer distinguish between the Taliban and al Qaeda. Because it sheltered al Qaeda, Rumsfeld argued, the Taliban regime had become terrorists: "These people are terrorists. They are harboring terrorists. They have been repressive to the Afghan people."[92] Thus the Taliban, a *domestically* repressive regime, became an international threat. "We did not start the war," Rumsfeld said. "The terrorists started it when they attacked the United States, murdering more than 5,000 innocent Americans. The Taliban, an illegitimate, unelected group of terrorists, started it when they invited the al Qaeda into Afghanistan and turned their country into a base from which those terrorists could strike out and kill our citizens."[93] By targeting the Taliban, the United States prompted al Qaeda and the Taliban regime to cement their relationship so that it became even less possible to distinguish between the two organizations.

If discrimination becomes conceptually difficult in a counterterror war, it also becomes militarily difficult to discriminate between combatants and noncombatants. Indeed, counterterror wars may tend toward extremes and may even in some ways come to resemble terrorist tactics. Because terrorists are not regular armed forces, with garrisons and equipment kept apart from the societies within which they reside, it is nearly impossible in this context (as the Bush administration admits) to avoid noncombatant casualties.

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Ironically, although terrorists require less support from those who "harbor" them than conventional militaries require from the populations they defend, the noncombatant populations in states that harbor terrorists are at greater risk of being killed by accident in a counterterror war than are the noncombatant populations of nonterrorist states or the terrorists themselves. And such "accidental" killings are sometimes intentional: the Serbian government said that the members of the Kosovo Liberation Army were terrorists, and used the fact that they were intermixed with civilians in Kosovo as part of the justification for its brutal "ethnic cleansing" there in the late 1990s.

Because terrorists, like guerrillas, mingle with innocent civilians, living in the cities and in the countryside—not in barracks or on front lines as concentrated targets—wars against them cannot be decisively won in military terms unless the great power is willing to annihilate the population where they reside. But annihilation, which would surely involve killing innocent people, cannot be morally or politically acceptable and would only sow the seeds of future resentment and terrorist acts in retaliation. The counterinsurgency wars of the past century, for example—Germany in South West Africa (where the Germans killed 50 percent of the Nama people and 75 to 80 percent of the Herero people) and France in Algeria and Indochina—illustrate the political and military difficulties of counterinsurgency.

Those who wage counterterror war try to discriminate between combatants and noncombatants, but this is extremely difficult. In the air war against the Taliban and al Qaeda, the United States used a combination of different sorts of "smart weapons" (about 60 percent) as well as different kinds of "dumb bombs." Indeed, the United States used more smart weapons—guided by lasers or the global-positioning system (GPS)—in the war in Afghanistan than in any previous conflict, about twice as many as it did in the 1999 war in Yugoslavia. Yet civilian casualty rates appeared to be higher in Afghanistan, per bomb, than in previous conflicts, although the Pentagon says it has not kept track of civilian casualties caused by U.S. attacks.[94]

Why does discrimination between combatants and noncombatants break down on the battlefield in counterterror wars even as "smart" weapons give the (ultimately false) assurance that discrimination is possible? There are several reasons. First, intelligence—knowing who is where at any given time—is more difficult when combatants and innocent civilians are mixed in close proximity (co-located, to use military jargon). Indeed, terrorists make use of civilians as cover and count on the scruples of those who practice discrimination. Second, nonterrorists who use conventional forces against terrorists and "those who harbor them" cannot use weapons that are discriminating enough: even precision weapons go astray and kill civilians. Also, some weapons are smarter than others. Laser-guided weapons, the most accurate "smart" weapons, were used less in Afghanistan than were the less accurate GPS-guided weapons. Third, "dumb" gravity and cluster bombs were also used in Afghanistan, and they are, because of the expense of precision-guided weapons, likely to remain part of the weapons mix in any future war.

If we foresee that both terrorists and noncombatants may be killed, and we cannot know in any one instance whether more noncombatants than combatants will die, the doctrine of double effect does not necessarily alleviate the problem posed by a counterterrorism war. We know we will harm noncombatants in a war against terror, unintentionally or not, and we cannot know that we will kill any terrorists. (This raises again the *jus ad bellum* questions of success and proportionality. Or as Hehir puts it, "We cannot simultaneously defeat terrorism and be seen as the bearers of technological terror."[95]) In an implicit recognition of the problem, the Pentagon shifted responsibility for noncombatant casualties in Afghanistan from the United States to the Taliban and al Qaeda. Rumsfeld argues:

> So let there be no doubt; responsibility for every single casualty in this war, be they innocent Afghans or innocent Americans, rests at the feet of [the] Taliban and al Qaeda. Their leaderships are the ones that are hiding in mosques and using Afghan civilians as human shields by placing their armor and artillery in close proximity to civilians, schools, hospitals, and the like. When the Taliban issue accusations of civilian casualties, they indict themselves.[96]

Given the difficulty of discriminating between combatants and noncombatants, even with smart bombs, one can understand the attractiveness of a policy of carefully targeted assassinations if it means that a single bullet would be used rather than several indiscriminate bombs.[97] Indeed, successful assassinations could potentially avoid the moral problem of killing innocents and the resultant practical problem of sowing resentment. But discrimination may be extremely difficult even in the case of assassination. Specifically, assassinations have been bungled, with noncombatants killed or injured. For example, Israel's policy of "targeted killings" of terrorists has occasionally gone terribly awry, as in July 2002, when an attack on a leader of the Hamas organization in a densely populated area in Gaza City wounded 140 people and killed 11, seven of whom were children.[98] Even when the intended target is isolated, as with capital punishment, an execution may kill someone who is, in fact, not guilty of terrorism. And on a political level, assassinations may be counterproductive even when the intended person is killed, if they fuel a cycle of revenge and retaliation. Moreover, an assassination policy assumes that international criminal law is nonexistent or functions poorly, while the widespread use of assassination, if it were deemed acceptable, could retard the development of international legal institutions and reduce the inhibitions against political assassination. Rather, if one is close enough to a terrorist to assassinate him or her without harming noncombatants, and the terrorist is a continuing threat whose guilt may be proven in a court, then the target may just as easily be arrested and put to trial with a reasonable assurance that he or she will be found guilty. Arrest could substitute for assassination.

9. If counterterror war and its corollaries—preemptive strikes, preventive war, counterproliferation, and regime change—promise to expand spatially and temporally, the consequences of war cannot be confined. Thus, how could we know whether and when war is proportional? In previous eras, our understanding of war—and, hence, of its morality—was generally based on a sense that the conduct and consequences of combat were limited. But such a

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view may now be understood as fundamentally mistaken. If a war in the Persian Gulf entails massive oil fires, which in turn lead to increased cancer rates and regional climate change, can we say that war is proportional? If unexploded cluster bombs and landmines kill or maim thousands each year—in many cases, decades after the war for which the weapons were sown has ended—can we say that war is proportional? If counterproliferation attacks on nuclear, chemical, or biological weapons inadvertently spread material that causes cancer or genetic mutation, is such an attack proportional? It may be that since weapons technologies have changed, and since we understand the consequences of war differently now, both modern and postmodern war cannot be proportional or discriminating because the consequences of war—the long-term environmental damage, and the physical and psychological impact on former combatants and noncombatant victims, including children—go far beyond the temporal and spatial confines of the "battlefield" and the "war."[99] Kant's injunction to avoid behaviors in war that would hurt the prospect of peace would seem to be in jeopardy.

The above problems are posed by the logic of just war theory. Once one steps outside the paradigm, other problems are raised by those who do not accept the premises of the just war tradition.

Outside Just War Theory

10. Should just war limits be applied in conflicts against those who do not follow just war theory? Specifically, the contemporary war against terrorism is described by many as a clash of civilizations—fundamentalist Islam against the West—or as a war of civilization against barbarism. The classical doctrines of both Sunni and Shia Islam have rules of war that are loosely analogous to just war theory in that they place limits on when and how wars should be conducted. For example, killing children in war is prohibited.[100] But the content of classical Islamic teaching is beside the point: despite their proclamations of being the protectors of true Islamic faith, the terrorists in al Qaeda were not guided by those prohibitions. Just war doctrine does not seem to have an exception for war against those who do not follow the same tradition. The limits still hold. But—as realists might argue—would not a state facing a combatant who ignored *jus in bello* limits be obliged to abandon its restraint if observing those limits prolonged the conflict or increased the number of casualties? This is the famous Hiroshima argument for which there is no easy answer.[101]

11. The injunction to refrain from unjust wars and to fight wars justly, presuming for the moment that is possible, raises an additional question also not directly addressed by just war theory: how might we get actors to adhere to just war criteria in a world where international law is only weakly binding? There are three routes to increasing the power of just war doctrine: socialization, where actors come to believe in the precepts of just war theory; persuasion, where actors are convinced on a case-by-case basis to abide by just war criteria; and coercion, where domestic political or international actors use strategic force to compel others (e.g., through sanctions) to behave justly. To the extent that all war, especially counterterror war, entails accepting both the assumption that force works and a diminution of political freedoms, it becomes more difficult to have just war or other ethical arguments and constrain the use of force.

12. Finally, critics of the just war tradition often suggest that the theory is fundamentally wrongheaded. Notwithstanding the jus ad bellum *criteria of last resort, just war theory seems to accept the inevitability of conflicts turning into wars.* It seems to be making war safer rather than making it disappear. Indeed, just war theory does not give enough attention to preventing war, nor does it encourage us to ask what lies at the root of our resort to war. If one rejects violence as a means of resolving conflict, then just war theory is fundamentally amoral and an abuse of casuistry.

An alternative approach informed by feminist theory would note that gendered categories of thought—stereotypes of masculinity and femininity, a binary logic of opposites—are a primary lens through which we see the conflict, understand it, and decide what are appropriate responses to the attack. In this case, the masculine stereotype is the resilient United States, which is able to pick itself up after an unjustified assault, shake off the dust, put out the fires, bury the dead, go find the culprits, and kill them or "bring them to justice." The United States simultaneously becomes the masculine protector of American noncombatants and of women's rights in Afghanistan, against Islamic extremism. The feminine stereotype is exemplified by those who articulate a primarily nonmilitary response to terrorism. Such responses are rejected as soft, effeminate, and by definition ineffective because they are nonmilitary and understood only as useful supplements to war. Indeed, it is almost as if the nonmilitary responses were no response at all. As Rumsfeld said,

> . . . the support of the American people will be steady and firm and understands that we've already lost thousands of lives. And our alternative—either the United States acquiesces and becomes terrorized and alters our way of life and gives up all our freedom, we systematically give up our freedom and our ability to function, or we take this battle to the enemy and to the terrorists. And we must do that. . . . The alternative is that we hold back and allow the terrorists to continue to kill thousands of American citizens and thousands of deployed forces and thousands of people in other countries.[102]

Those who oppose a military response are likened to "appeasers" who reject self-defense. Ed Koch argues, "Don't we have the right of self-defense? . . . Some call our reprisals 'revenge,' which they denounce even more heatedly, because revenge conveys a feeling of satisfaction. Some shy away from the use of the word 'vengeance.' I say what's wrong with avenging our innocent dead?"[103] Koch does not suggest how a cycle of revenge might end.

Feminists would focus on the socialization of both parties to a conflict, asking how actors' understandings of themselves and the other were constructed and maintained, and how gendered ways of thinking may have caused and stoked the conflict. Further, feminists would also take a holistic view of war and argue that the categories of proportionality and discrimination cannot hold if one takes seriously the damage that the preparation for war and the waging of war do to noncombatants.[104] Thus, the force of the pacifist and feminist objection to just war theory is that we should spend much less time deciding when and how to fight

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wars—because war is wrong and ultimately fails to achieve most of its practitioners' objectives—and much more effort on avoiding war altogether.

Evaluating Just War Theory and Counterterror War

Recall that this article has three aims: to assess the military elements of the Bush administration's counterterror policy, to examine counterterror war generally in light of changes in the character of war, and to evaluate the usefulness of just war theory.

Can counterterror war be just, and is the current U.S. counterterror war just? A war can only be considered just if both its cause and conduct are just. While claiming that the U.S. war in Afghanistan is just, Richard Falk suggests that U.S. strategy must still avoid the excesses of militarism: "the justice of the cause and of the limited ends is in danger of being negated by the injustice of improper means and excessive ends. Unlike World War II and prior just wars, this one can be won only if tactics adhere to legal and moral constraints on the means used to conduct it, and to limited ends."[105] Though it is still possible to fight in self-defense, the character of terrorism and counterterrorism in the present military-technical context makes it extremely difficult to fight a just counterterror war.

Specifically, as the Bush administration correctly claims, terrorism as practiced by al Qaeda and other postmodern terrorists is, in many respects, a new kind of war, and the vulnerability of industrialized states to it means that they must always be vigilant. Self-defense is appropriate against such a threat. However, when values of the self are defined broadly and the nature of terrorist tactics and mobilization strategies is taken into account, the distinctions blur between offense and defense, war and peace, combatants and noncombatants. It becomes hard in such circumstances to use force proportionately and to discriminate between combatants and noncombatants. Further, the sense of imminent threat means that time is always pressured. Counterterror war thus may be nearly impossible to fight justly if the strategy is preemption and large-scale military assault. The current U.S. strategy for the war on terror is, on balance, not just in the moral sense, despite the administration's pronouncements and best efforts to that effect. The cause of self-defense is just, but that is where justice in the U.S. counterterror war has reached its limit. Preemption, once it becomes a preventive war strategy, probably cannot ever be just in a context of counterterror war.[106]

If my evaluation of counterterror war in light of just war theory and the realities of contemporary war is correct—that counterterror war is unlikely to be just—then we are morally obliged to find a better alternative. A sound counterterrorist policy should de-emphasize counterterror war and emphasize three elements: protection against terrorist assault, frustration and disruption of terrorist activities, and prevention by long-term diminution of the attractiveness of terrorism as an option.

First, the potential targets of terrorist assault should be protected to the extent possible. While there is no way for modern economies and societies to be totally invulnerable, they can reduce their vulnerability. For example, nuclear power plants could be phased out, and the nuclear material often stored at those plants could be put in safe, dry storage. Protection, which will include some military elements, besides limiting the damage of a terrorist attack, is also a form of deterrence if terrorists believe their aims will be frustrated.[107]

Second, as much as possible, intelligence and law-enforcement strategies should be used to detect, disrupt, and make more difficult terrorist planning and operations.[108] One of the most important areas of terrorist vulnerability may be in mobilization—of money, equipment, arms, and recruits—as well as the links of terrorists to organized crime. Determined law-enforcement efforts have succeeded in finding terrorists and disrupting their operations by, for example, tracking illicit transfers of money, drugs, and arms.[109] Those who are found, tried, and convicted as terrorists should be treated as criminals and sentenced to prison time.

Third, over the long run, an effective strategy to prevent terrorism must address its root causes, which lie in the beliefs and circumstances of terrorists. Specifically, terrorists have both grievances and political aims (these vary by individual and organization); they are frustrated in achieving these aims, or they believe they are unable to do so through peaceful means. Further, terrorists believe that violence works both short-term and long-term, and that violence is a legitimate tool. All these beliefs have to be addressed. As the Bush administration recognizes in its new National Security Strategy, while no cause justifies terrorism, legitimate grievances must be acknowledged and rectified to the extent possible. Domestic and international institutions must provide a real alternative to violence while terrorists and their supporters must learn that violence does not work and is illegitimate.[110]

In sum, there are many tools available to address terrorism; indeed, the Bush administration's counterterror policy includes much of what I suggest above. Unfortunately, however, the current U.S. policy emphasizes military force. The emphasis on counterterror war and preemption is both unjust and unlikely to be effective. Moreover, it can undermine efforts to protect, and to disrupt and prevent terrorism.

In service of the third aim of this article—to assess just war theory in the contemporary context—I discussed 12 serious problems that arise at the intersection of just war theory and counterterror war. The thread that ties these problems together is the fact that counterterror wars tend to expand, along many dimensions, to the point that *jus ad bellum* and *jus in bello* limits on war are weakened or vitiated. Critics have also said that just war theory criteria are slippery and too easily misused to justify unjust wars. Is misuse, as Michael Walzer argues, the tribute that vice pays to virtue? Or as the philosophers John Ladd, Sarah Ruddick, and Iris Young suggest, is the ease of misuse a sign that the theory is flawed and ought to be scrapped?[111] What difference does and should just war theory make?

The invocation of the just war tradition by the Bush administration, along with the fact that the conduct of the U.S. counterterror war seems to have been at least in part influenced by it, indicates that just war theory makes a military and political difference. Despite the transformation of war and the problems I raise above, just war theory is remarkably resilient, which may in part be due to the codification of some of its core normative

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precepts into international law, and in part to its hard-headed recognition that violent conflict is a recurrent feature of international life.

Ethical traditions are not checklists or simple codes of conduct—they are tools for evaluating options and assessing behavior. As such, the questions that an ethical tradition raises may not have clear and simple answers. Several of the problems I raise above are extremely difficult to resolve and in fact may not be resolvable on an abstract level. Each conflict demands its own analysis, which must occur prior to and throughout a war. Just war theory, and the international legal precepts it animates, places the burden of proof on those who would make war.

As important as its substantive contributions are, just war theory is resilient because it provides a discursive framework for making ethical arguments about a practice that is resistant to—indeed, denies—the importance of argumentation.[112] To invoke its mix of pragmatic and deontological precepts is to provide an occasion for asking questions and making arguments that can be used to curb the rush to war and constrain wars once they start. But despite its utility and resilience, one cannot rely entirely on just war theory. The just war tradition must be understood as only a crutch or partial palliative until the underlying pathologies can be understood, prevented, and cured by more powerful medicine.

References

Apfel, Roberta J., and Bennett Simon, eds. 1996. *Minefields in their Hearts: The Mental Health of Children in War and Communal Violence*. New Haven: Yale University Press.

Augustine, Saint, Bishop of Hippo. [440] 1998. *The City of God against the Pagans,* trans. R.W. Dyson. Cambridge: Cambridge University Press.

Bennet, James. 2002. Israelis hit home of a Hamas chief; his fate unclear. *The New York Times,* 23 July, A1.

Blair, Tony. 1999. Doctrine of the international community. Speech to the Economic Club of Chicago, 22 April. Foreign and Commonwealth Office, London.

Buettner, Russ. 2001. Stray U.S. bombs kill 13: Friends and foes angered. *New York Daily News,* 29 October, 14.

Bumiller, Elisabeth. 2001. President rejects offer by Taliban for negotiations: Demands surrender of bin Laden—U.S. bombs fall in Kabul. *The New York Times,* 15 October, A1.

Bush, George W. 2001. Address on terrorism before a joint meeting of Congress. Transcript. *The New York Times,* 21 September, B4.

———. 2002. Remarks at 1 June graduation exercise of the United States Military Academy at West Point, New York. White House transcript. Available at www.whitehouse.gov/news/releases/2002/06/20020601-3.html. Accessed 1 June 2002.

Cheney, Dick. 2002. In Cheney's words: The administration case for removing Saddam Hussein. *The New York Times,* 27 August, A8.

Chesterman, Simon. 2001. *Just War or Just Peace: Humanitarian Intervention and International Law*. Oxford: Oxford University Press.

Coates, Anthony. 1996. The new world order and the ethics of war. In *The Ethical Dimensions of Global Change,* ed. Holden Barry. London: Macmillan, 205–25.

Cohn, Carol, and Sarah Ruddick. Feminist ethical perspectives on weapons of mass destruction. In *Ethical Perspectives on Weapons of Mass Destruction,* eds. Sohail Hashmi and Steven Lee. Princeton: Princeton University Press. Forthcoming.

Conetta, Carl. 2002. Operation Enduring Freedom: Why a higher rate of civilian bombing casualties. *Project on Defense Alternatives Briefing Report Number 11,* 18 January.

Crawford, Neta C. 2000. The passion of world politics: Propositions on emotion and emotional relationships. *International Security* 24:4, 116–56.

———. 2002. *Argument and Change in World Politics: Ethics, Decolonization, and Humanitarian Intervention*. Cambridge: Cambridge University Press.

Department of Defense. 2001. Quadrennial defense review report. 30 September. Washington, D.C.: U.S. Government Printing Office.

Donagan, Alan. 1994. The relation of moral theory to moral judgments. In *The Philosophical Papers of Alan Donagan, Volume II: Action, Reason, and Value*. Chicago: University of Chicago Press, 194–216.

Elshtain, Jean Bethke. 1992. Reflections on war and political discourse: Realism, just war, and feminism in a nuclear age. In *Just War Theory,* ed. Jean Bethke Elshtain. New York: Columbia University Press, 260–79.

Falk, Richard. 2001. Defining a just war. *The Nation*, 29 October, 11–15.

Filkins, Dexter. 2002. Flaws in U.S. air war left hundreds of civilians dead. *The New York Times,* 21 July, 12.

Frey, R.G., and Christopher W. Morris, eds. 1991. *Violence, Terrorism, and Justice*. Cambridge: Cambridge University Press.

Friedman, Thomas L. 2001. World War III. Op-ed, *The New York Times,* 13 September, A27.

Gordon, Joy. 1999. A peaceful, silent, deadly remedy: The ethics of economic sanctions. *Ethics and International Affairs* 13, 123–42.

Harding, Luke, Rory McCarthy, and Richard Norton-Taylor. 2001. Refugee crisis builds as Taliban consider deal. *The Guardian,* 19 September, 1.

Hehir, J. Bryan. 2001. What can be done? What should be done? *America,* 8 October, 9–12.

Heymann, Philip B. 2001. *Terrorism and America: A Commonsense Strategy for a Democratic Society*. Cambridge: MIT Press.

Hoffman, Bruce. 1998. *Inside Terrorism*. New York: Columbia University Press.

———. 2001. Rethinking terrorism in light of the war on terrorism. Testimony before the Subcommittee on Terrorism and Homeland Security, U.S. House of Representatives, 26 September.

Holmes, Robert. 1989. *On War and Morality*. Princeton: Princeton University Press.

Howard, Michael, George J. Andreopoulos, and Mark R. Shulman, eds. 1994. *The Laws of War: Constraints on*

https://doi.org/10.1017/S1537592703000021 Published online by Cambridge University Press

Warfare in the Western World. New Haven: Yale University Press.

Johnson, James Turner. 1975. *Ideology, Reason, and the Limitation of War: Religious and Secular Concepts, 1200–1740*. Princeton: Princeton University Press.

———. 1981. *Just War Tradition and the Restraint of War: A Moral and Historical Inquiry*. Princeton: Princeton University Press.

———. 1992. Threats, values, and defense: Does the defense of values by force remain a moral possibility? In *Just War Theory,* ed. Jean Bethke Elshtain. New York: Columbia University Press, 55–76.

———. 1999. *Morality and Contemporary Warfare*. New Haven: Yale University Press.

Kaldor, Mary. 1999. *New and Old Wars: Organized Violence in a Global Era*. Stanford: Stanford University Press.

Kant, Immanuel. 1999. *Metaphysical Elements of Justice*. Indianapolis: Hackett.

———. 1983. To perpetual peace: A philosophical sketch. In *Perpetual Peace and Other Essays on Politics, History and Morals,* trans. Ted Humphrey. Cambridge, Mass.: Hackett, 107–43.

Keegan, John. 1993. *A History of Warfare*. New York: Knopf.

Kelsay, John. 1993. *Islam and War: A Study in Comparative Ethics*. Louisville, Ky.: Westminster.

Kennedy, Helen. 2001. Taliban balks, won't hand over bin Laden: Demands proof he was involved. *New York Daily News,* 22 September, 2.

Koch, Ed. 2001. Appeasement is no answer to terrorism. *Newsday*, 19 October, A49.

Ladd, John. 1991. The idea of collective violence. In *Justice, Law and Violence,* eds. James E. Brady and Newton Garver. Philadelphia: Temple University Press.

Latham, Andrew. 2002. Warfare transformed: A Braudelian perspective on the "revolution in military affairs." *European Journal of International Relations* 8:2, 231–66.

Lichtblau, Eric. 2002. U.S. raids foil plots to send arms to al Qaeda and others. *The New York Times,* 7 November, A18.

Luard, Evan. 1987. *War in International Society*. New Haven: Yale University Press.

Machel, Graça. 2001.*The Impact of War on Children: A Review of Progress since the 1996 United Nations Report on the Impact of Armed Conflict on Children*. New York: Palgrave.

McNeill, William H. 1982. *The Pursuit of Power: Technology, Armed Force, and Society since A.D. 1000*. Chicago: University of Chicago Press.

Morgenthau, Hans J. 1967. To intervene or not to intervene. *Foreign Affairs* 45:3, 425–36.

———. 1985. *Politics Among Nations: The Struggle for Power and Peace*. 6th ed., revised by Kenneth W. Thompson. New York: Knopf.

Myers, Richard. 2001a. Interview with *ABC This Week*. 21 October. Available at www.defenselink.mil/news/Oct2001/t10222001_t1021jcs.html. Accessed 21 October 2001.

———. 2001b. Department of Defense news briefing, with Secretary Donald Rumsfeld. 22 October. Available at www.defenselink.mil/news/Oct2001/t10222001_t1022sd.html. Accessed 22 October 2001.

———. 2001c. Department of Defense news briefing, with Secretary Donald Rumsfeld. 25 October. Available at www.defenselink.mil/news/Oct2001/t10252001_t1025rum.html. Accessed 25 October 2001.

Nardin, Terry. 1992. Ethical traditions in international affairs. In *Traditions of International Ethics,* eds. Terry Nardin and David R. Mapel. Cambridge: Cambridge University Press, 1–22.

———. 2002. The moral basis of humanitarian intervention. *Ethics and International Affairs* 16:1, 57–70.

National Commission on Terrorism. 2000. Countering the changing threat of international terrorism. Washington, D.C.: U.S. Government Printing Office.

National Defense Panel. 1997. *Transforming Defense: National Security in the 21st Century*. Washington, D.C.: U.S. Government Printing Office.

National Security Council. 2002. The national security strategy of the United States of America. Washington, D.C.: Office of the President, September.

Pape, Robert. 1996. *Bombing to Win: Air Power and Coercion in War*. Ithaca: Cornell University Press.

Pierce, Albert C. 1996. Just war principles and economic sanctions. *Ethics and International Affairs* 10, 99–113.

Pillar, Paul R. 2001. *Terrorism and U.S. Foreign Policy*. Washington, D.C.: Brookings Institution Press.

Powell, Colin. 2002. Perspectives interview, *The New York Times*, 8 September, 18.

Rumsfeld, Donald H. 2001a. A new kind of war. Op-ed, *The New York Times,* 27 September, A25.

———. 2001b. Rumsfeld and General Richard Myers, briefing on Enduring Freedom, 7 October. Available at www.defenselink.mil/news/Oct2001/t10072001_t1007sd.html. Accessed 7 October 2001.

———. 2001c. Rumsfeld interview with *CNN Live,* 8 October. Available at www.defenselink.mil/news/Oct2001/t10082001_t1008cnn.html. Accessed 8 October 2001.

———. 2001d. Department of Defense news briefing, Rumsfeld with General Richard Myers. 18 October. Available at www.defenselink.mil/news/Oct2001/t10182001_t018sdmy.html. Accessed 18 October 2001.

———. 2001e. Department of Defense news briefing, with General Richard Myers. 22 October. Available at www.defenselink.mil/news/Oct2001/t10222001_t1022sd.html. Accessed 22 October 2001.

———. 2001f. Interview on *Voice of America*. 23 October. Available at www.defenselink.mil/news/Oct2001/t10232001_t1023voa.html. Accessed 23 October 2001.

———. 2001g. Interview with *USA Today*. 24 October. Available at www.defenselink.mil/news/Oct2001/t10252001_t1024usa.html. Accessed 24 October 2001.

———. 2001h. Interview with Wolf Blitzer, CNN. 28 October. Available at www.defenselink.mil/news/Oct2001/t10282001_t1028sd2.html. Accessed 28 October 2001.

https://doi.org/10.1017/S1537592703000021 Published online by Cambridge University Press

———. 2001i. Remarks at stakeout outside ABC-TV Studio. 28 October. Available at www.defenselink.mil/news/Oct2001/t10292001_t1028sd3.html. Accessed 28 October 2001.
———. 2001j. Department of Defense news briefing, with General Richard Myers. 29 October. Available at www.defenselink.mil/news/Oct2001/t10292001_t1029sd.html. Accessed 29 October 2001.
———. 2001k. Department of Defense news briefing, with General Richard Myers. 4 December. Available at www.defenselink.mil/news/Dec2001/t12042001_t1204sd.html. Accessed 4 December 2001.
———. 2002. In his own words. Interview, *The New York Times,* 4 September, A10.
Schelling, Thomas. 1991. What purposes can "international terrorism" serve? In *Violence, Terrorism, and Justice*, eds. R.G. Frey and Christopher Morris. Cambridge: Cambridge University Press, 18–32.
Spector, Bertram I. 1999. Negotiating with villains. In *International Negotiation: Actors, Structure/Process, Values,* by Peter Berton, Hiroshi Kimura, and I. William Zartman. New York: St. Martin's, 309–34.
Stern, Jessica. 1999. *The Ultimate Terrorists*. Cambridge: Harvard University Press.
Stufflebeem, John D. 2001. Department of Defense news briefing. 24 October. Available at www.defenselink.mil/news/Oct2001/t10242001_t1024stu.html. Accessed 24 October 2001.
Tilly, Charles. 1992. *Coercion Capital and European States, A.D. 990–1992*. Oxford: Blackwell.
United States Catholic Bishops. 1983. *The Challenge of Peace: God's Promise and Our Response*. Washington, D.C.: United States Catholic Conference.
Walzer, Michael. 1992. Justice and injustice in the Gulf War. In *But Was It Just?: Reflections on the Morality of the Persian Gulf War,* ed. David E. Decosse. New York: Doubleday, 1–17.
———. 2000. *Just and Unjust Wars: A Moral Argument with Historical Illustrations, Third Edition*. New York: Basic Books.
———. 2001. First, define the battlefield. *The New York Times,* 21 September, A27.
Weiss, Thomas G., David Cortright, George A. Lopez, and Larry Minear, eds. 1997. *Political Gain and Civilian Pain: Humanitarian Impacts of Economic Sanctions*. Boulder, Col.: Rowman and Littlefield.

Notes

1 Bush 2002.
2 Rumsfeld 2001e.
3 Myers 2001b.
4 Rumsfeld 2001a.
5 I do not address the question of whether terrorism is just since it seems, prima facie, to be unjust. Stern 1999, 17–19; Frey and Morris 1991.
6 Morgenthau 1985, 13; also see Morgenthau 1967.
7 Bush 2002.
8 The National Security Strategy states: "The purpose for our actions will always be to eliminate a specific threat to the United States or our allies and friends. The reasons for our actions will be clear, the force measured, and the cause just." National Security Council (hereafter NSC) 2002, 16.
9 Elshtain 1992, 268.
10 Nardin 1992, 12.
11 See Johnson 1975 and Johnson 1981.
12 United States Catholic Bishops 1983.
13 Augustine [440] 1998, book 4, chapter 15, 161–2.
14 On whether humanitarian intervention is legal or just, see Chesterman 2001 and Nardin 2002.
15 Although it historically included the punishment of evil and the restoration of the status quo ante (e.g., retaking land), just cause has more recently been limited to self-defense, raising the question of whether causes once considered just are legitimate. Specifically, is it just to wage war to punish evil? Despite earlier just war theorizing, the answer is now no, perhaps because we now recognize that evil is often in the eye of the beholder, that the aim of punishing "evil" may be abused, and that international legal institutions (e.g., the International Criminal Court) may be used to punish specific evildoers. And although reparations are legal under international law, the punishment of *states* is not allowed.
16 Johnson 1999, 46–8. But all adult citizens, not just "sovereigns"—especially in democracies—must evaluate the justice of a particular war.
17 There have been other limits, such as prohibitions on combat, during certain days of the year or on certain weapons. See Howard, Andreopoulos, and Shulman 1994. Further, the discrimination criteria of "no Carthaginian Peace"—that "no devastation . . . leaves the land uninhabitable after the war is over"—is also sometimes asserted. Johnson 1999, 126.
18 Kant 1983, 110. I thank John Ladd for reminding me of this point.
19 Although as Walzer ably shows, many combatants in regular armies would rather not be fighting, and this affects our understanding of their status. Walzer 2000, 26–9 and 142–3. Child soldiers and forced conscripts, kidnapped and held under duress, also do not fit our image of willing combatants.
20 Walzer 2000, 155–6.
21 An example of the codification of just war theory is the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War.
22 Kant 1999, section 57, 155.
23 National Defense Panel 1997, 11.
24 On the history of war, see McNeill 1982, Luard 1987, Tilly 1992, Keegan 1993, Kaldor 1999, and Latham 2002.
25 Stern 1999, 6 and 15–17.
26 Powell 2002.
27 Blair 1999.

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28 Throughout the article, I refer to "terrorists" in a way that might be understood to imply that all terrorists are alike or that all terrorist organizations spring from the same kinds of grievances and have the same tactics, strategies, and political objectives. This is clearly not the case. (For example, we can distinguish between state terrorism and the terrorism practiced by some revolutionary groups.) Rather, I refer to terrorists as I refer to "states"—as a generic term that covers a variety of types. And just as with states, it matters for our understanding and for the development of counterterrorist policies what kind of terrorist one is describing. There is not space here, however, to develop a typology and elaborate upon it. For a discussion, see Pillar 2001, 130–96. Hoffman 2001 argues that terrorism itself needs to be understood differently after the September 11 attacks.
29 According to Walzer 2000, however, terrorists have historically distinguished between targets. One could also argue that noncombatant immunity was breached on a large scale by the West during the 1990s when economic sanctions were applied to broad and devastating effect in Iraq and Haiti. See Weiss, Cortright, Lopez, and Minear 1997; Pierce 1996; and Gordon 1999.
30 Walzer 2000, 197–8.
31 Pape 1996.
32 Stern 1999, 7; Pillar 2001, 45–7.
33 Bush 2002.
34 Rumsfeld 2002.
35 Schelling 1991 argues that terrorists rarely achieve any positive goals.
36 Walzer 1992, 3.
37 Buettner 2001.
38 Rumsfeld 2001h.
39 Rumsfeld 2001i.
40 Myers 2001a.
41 Rumsfeld 2001g.
42 Quoted in Filkins 2002.
43 Rumsfeld 2001j.
44 Rumsfeld 2001j.
45 Myers 2001c.
46 Myers 2001c.
47 Rumsfeld 2001k.
48 Rumsfeld 2001j.
49 Stufflebeem 2001.
50 NSC 2002, 15.
51 Bush 2001.
52 "The enemy of America is not our many Muslim friends. It is not our many Arab friends. Our enemy is a radical network of terrorists and every government that supports them." Bush 2001.
53 Johnson 1992, 64.
54 Department of Defense (hereafter DoD) 2001, 2.
55 DoD 2001, 30 and 62.
56 NSC 2002, 1.
57 NSC 2002, 31.
58 Walzer 2000, 81.
59 Walzer 2000, 85.
60 NSC 2002, 6.
61 Cheney 2002, A8.
62 NSC 2002, 15.
63 For example, see the National Commission on Terrorism 2000 and NSC 2002, 5.
64 Kennedy 2001.
65 Harding et al. 2001, 1.
66 Quoted in Bumiller 2001.
67 Of course, just war theory is not alone in failing to give guidance of this sort. Exceptions are Spector 1999 and Schelling 1991.
68 NSC 2002, 6.
69 Bush 2001.
70 Bush 2002.
71 Holmes 1989, 288.
72 Coates 1996, 217.
73 See Hoffman 1998, chapter 1; Heymann 2001, 3–12; and Pillar 2001, 12–18.
74 Walzer 2001.
75 Hehir 2001, 11.
76 Pillar 2001, 14. Similarly, the trauma of terrorism remains long after an incident, is rekindled by constant preparedness, and recurs with anniversaries of assaults. For example, around the one-year anniversary of the September 11 attacks, the United States resumed 24-hour air patrols over New York and Washington, D.C.
77 Rumsfeld 2001g.
78 Rumsfeld 2001d.
79 Bush 2002. However, U.S. policy was moving toward equating preemption with prevention prior to the September 11 attacks.
80 Bush 2001.
81 Rumsfeld 2001b.
82 See NSC 2002, 13–15.
83 Friedman 2001.
84 Rumsfeld 2001g.
85 Rumsfeld 2001b.
86 Rumsfeld 2001e.
87 Crawford 2000, 145–50.
88 John Ladd argues that discrimination is impossible in all modern war: "built into the operations themselves is the virtual impossibility of discriminating between victims." Ladd 1991, 25. While Ladd's position is perhaps too strong, discrimination is also extremely difficult in guerrilla and imperial war.
89 NSC 2002, 5.
90 Bush 2001, B4.
91 NSC 2002, 5.
92 Rumsfeld 2001c.
93 Rumsfeld 2001j.
94 Conetta 2002; Filkins 2002.
95 Hehir 2001, 12.
96 Rumsfeld 2001j.
97 Holmes 1989, 262.
98 Bennet 2002.

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99 On children, see Apfel and Simon 1996; Machel 2001.
100 Kelsay 1993.
101 See Donagan 1994.
102 Rumsfeld 2001f.
103 Koch 2001.
104 Cohn and Ruddick (forthcoming).
105 Falk 2001, 11.
106 This is not to mention the practical risks of preemptive strategies, where potential targets may feel pressure to use their forces or lose them.
107 See Pillar 2001; Stern 1999.
108 Domestic counterterrorism is extremely difficult to keep limited and focused because of the nature of contemporary terrorism, where individuals who learn basic chemistry and biology—and, of course, basic piloting skills—can be preparing for terrorism. Thus, law-enforcement and intelligence agents also have to avoid an invasive and inefficient dragnet.
109 Lichtblau 2002.
110 NSC 2002, 5–6.
111 These philosophers separately made the argument that just war theory was fundamentally flawed in response to an early draft of this article. E-mail correspondence, August and September 2002.
112 On ethical arguments in world politics, see Crawford 2002.

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