Just War Thinking as a Social Practice

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The abstract for the International Studies Association panel that gave rise to this special section of *Ethics & International Affairs* referred to the "triumph" of just war theory. However, I think we ought rather to speak of just war discourse as occupying a particular niche. This is especially so with respect to discussions about policy: when and where governments should make use of military force, what type, and so on. In that context, appeals to the criteria of *jus ad bellum* and *jus in bello* complement (or sometimes compete with) thinking that draws on international law, various strategic doctrines (for example, counterinsurgency warfare, or COIN), notions of reciprocity between states, and a host of other considerations. The notion of "triumph" claims too much. At the same time, for advocates of the just war framework, the kind of recognition indicated by presidential and other official mentions of the idea is worthy of note. Some of these are due to constituency politics—that is, to the idea that "institutional" advocates of just war (say, the U.S. Conference of Catholic Bishops) may influence blocs of voters. Other invocations are better interpreted as a recognition that the vocabulary of just war can serve (along with other ways of speaking) in the attempt to craft wise policy.[1]

Given the niche occupied by just war thinking in contemporary policy discourse, it is worth asking (or perhaps, re-asking) several basic questions about the just war vocabulary. What purposes does it (or can it) serve? What is the nature of its authority? How does or ought just war thinking proceed? Or, to

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put it another way, how does one recognize "good" just war thinking? In this article I present a view of just war thinking as a social practice, arguing that (1) of the several purposes just war thinking serves, political wisdom has pride of place; (2) the authority of the just war framework rests in its ability to illumine policy; and (3) good just war thinking involves continuous and complete deliberation, in the sense that one attends to all the standard criteria at war's inception, at its end, and throughout the course of conflict. By way of illustration I review some of the contributions (and failures) of just war argument with respect to NATO's post-9/11 effort in Afghanistan.

Just War Argument as a Social Practice

In referring to just war thinking as a social practice, I am making use of some ideas developed more fully by Robert Brandom and Jeffrey Stout. In particular, Stout's analysis of ethics as a social practice provides a model for my reflections.[2] One might put it this way: the criteria of *jus ad bellum* and *jus in bello* provide a framework for structured participation in a public conversation about the use of military force. In the context of a constitutional democracy, citizens who choose to speak in just war terms express commitments. They invite others to respond to their assertions by joining in just war argument (for example, by questioning the way particular criteria are interpreted or the way that an argument comports with the facts of a case) or by proposing alternative vocabularies (for example, those of international law or strategic doctrines). In the process of giving and asking for reasons for going to war, those who argue in just war terms seek to influence policy by persuading others that their analysis provides a way to express and fulfill the desire that military action be both wise and just.

As a social practice, the authority of just war argument rests, in some sense, on the habits of citizens—that is, on the readiness of at least some people to employ its vocabulary. They may do so for a variety of reasons, but the most important ones seem to involve the desire for justice. The purchase of the vocabulary does not, in the first place, require an account of one or a set of principles as a kind of foundation for this particular way of speaking. Nor does it require a theory of justice, beyond the simple notion that justice involves rendering to others that which is due to them. Of course, in particular instances some advocates of the just war framework may place it in the service of such principles or theories. All that is needed at the start, however, is the interest of citizens in employing this

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particular vocabulary with respect to the question: Does a particular action comport with notions of that which is right?[3]

Indeed, there is a sense in which the locution "just war theory" seems not to fit the way much just war argument proceeds. Michael Walzer's account in *Just and Unjust Wars* provides a nice illustration:

> I did not begin by thinking about war in general, but about particular wars, above all the American intervention in Vietnam. Nor did I begin as a philosopher, but as a political activist and a partisan. . . . It was, for example, a matter of great importance to all of us in the American anti-war movement of the late 1960s and early 1970s that we found a moral doctrine ready at hand. . . . Our anger and indignation were shaped by the words available to express them, and the words were at the tips of our tongues even though we had never before explored their meanings and connections.[4]

As a social practice, just war argument is frequently, if not mostly, an exemplification of the type of rationality Brandom characterizes as "historical."[5] In this, its advocates (like Walzer) find a vocabulary "at hand." As they explore its terms, they find themselves participating in "a certain kind of reconstruction of a tradition."[6] As an example, consider the *in bello* criterion of discrimination or noncombatant immunity. The terminology is in the first sense an inheritance, part of the legacy of prior generations, developed as a way of indicating that some on the enemy side ought not to be the target of direct military attack.[7] Specifications or lists that fill out the notion vary according to context, as does the reasoning of those who develop them. Those adopting this notion in a contemporary setting will argue in part about the import of such lists and types of reasoning. One could say they serve as precedents, in the sense of providing references for contemporary arguments. In response to the facts of a particular case, one issue will have to do with identifying and describing such precedents. Another will be what to make of them—to ask whether the precedents fit with a new context. In fashioning an argument about action that is illegitimate (because it is indiscriminate), citizens may find that the old lists do not quite cover the range of their concerns. They may also be aware that the lists and reasoning they develop will have import for the future, as others look back to the fighting in, say, post-9/11 Afghanistan and cite particular examples as precedents. As a type of historical rationality, just war argument proceeds with reference to the past, in an attempt to fashion judgments about the present, with import for the future.

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With respect to those judgments, or more generally to the argument, who decides what is right? In one sense, no one; or, to put it another way, everyone—or at least all who participate. As Stout is fond of saying, the social practice model of discourse does not require an umpire.[8] Citizens listen to one another, hold each other accountable, ask questions, and advance counter-arguments. This is the nature of democratic exchange, where such institutionalized norms as freedom of speech and of assembly set a context for argument without dictating outcomes. Some participants may earn a certain deference, for example, in recognition of their knowledge of history, the acuity of their arguments, or their reputation for morally exemplary behavior or insight. But no participant claims infallibility, or if one does, there is no requirement for others to accept the claim.

In this connection, presidential invocation of just war discourse is of interest. In the United States, constitutional norms vest authority with respect to war to the president, in consultation with the Congress. In that sense, one might be tempted to take the view that these officials function as umpires, at least in certain respects. And yet, citizens may join a president and other officials in debate. They exercise a power of review and of judgment, particularly by means of elections. Just war argument, in other words, does not cease once constitutionally designated officials make a decision to commit (or not to commit) to the use of military force. The just war criteria may be invoked at the outset of such a commitment, but also in the context of an ongoing policy, and after war is ended. The argument is not settled so long as some citizens remain interested in the question: Is (or was) this war wise and just?[9]

Having characterized just war argument as a social practice, let me provide a brief account of its main features. When citizens take up the just war vocabulary, what are their intentions? What commitments do they undertake?

First, I take it that the just war vocabulary expresses a desire to tie the use of military force to policies that are both wise and just. In this sense, I find suggestive the kind of argument associated with such historic interpreters as Thomas Aquinas, by which an account of political and military matters is tied to the virtues of prudence (or practical wisdom), justice, temperance, and fortitude. In particular, prudence and justice are associated with political leadership. As Thomas has it, a just ruler is one whose habit of action involves taking counsel, making judgments, and issuing commands concerning the means of obtaining a due (that is, a just) end, in consideration of the public good. The virtue of prudence combines intellectual and moral characteristics. Taking counsel, Thomas's ruler

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listens to others, so as to develop a true or accurate account of the facts relevant to making policy. The verdict or judgment, as the command associated with prudence, has to do with means—in the case before us, of whether war is or can be an instrument of statecraft. Prudence does not determine the due or just end —that is a matter for the virtue of justice, in the sense that it involves a habit of acting in ways that render that which is due by taking account of the public good.[10]

As a social practice, just war argument ultimately touches on some of the broadest questions associated with political life. What constitutes the public good? Speaking in general terms, Paul Ramsey argued that wise statecraft involves consideration of the common good of a particular state as well as of the international common good, and seeks to increase the area of overlap between the two. Focusing on U.S. foreign policy in particular, Ramsey supposed that its "overriding goal" should be "to create and sustain a system of free and independent nations."[11] Walter Russell Mead takes a somewhat different tack. For Mead, the responsibilities of the United States involve sustaining an international order in which trade is relatively free and open. The United States picked up this mantle (which was previously carried by the British, and before them by the Dutch) following the Second World War. To that end, postwar institutions—such as the United Nations, the International Monetary Fund, the World Bank, and NATO and other regional organizations—represent an attempt to provide definition to, and a structure that helps to sustain, international exchange. Debates about the use of military force take place in connection with this postwar order, not least in the sense that they involve estimates of the current strengths and weaknesses of international institutions and of the likely impact of war on their ability to play their assigned roles. [12]

One can add to these accounts, for example by attending to those who focus on human rights, or on countering practices that entrench the power of some to dominate others. As a social practice, just war argument allows for a number of ways of specifying "that which is due." The important point is that its advocates seek to tie prudence to justice. Separated from justice, prudence deteriorates into cunning; separated from prudence, justice will often lend itself to faulty estimates concerning the difficulties of a particular case.

The specific form by which just war argument seeks to effect the connection between prudence and justice has to do with the criteria of *jus ad bellum* and *jus in bello*. While one might speak about these as a standard list, accounts do

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vary. Let me propose the following, drawn in part from the precedents provided by Thomas Aquinas and his interpreters, in particular the Spaniards Francisco de Vitoria and Francisco Suarez. In Thomas's well-known formulation, the justice of war is measured by three requirements: right authority, just cause, and right intention. For Thomas, right authority was vested in those assigned to care for the common good. Just cause ties war to addressing particular behaviors for which those attacked are culpable. Quoting Augustine, Thomas illustrates: "A just war is wont to be described as one that avenges wrongs, when a nation or state has to be punished, for refusing to make amends for the wrongs inflicted by its subjects, or to restore what it has seized unjustly." Right intention has to do with the purposes of those engaged in fighting. They must "intend the advancement of good, or the avoidance of evil." Again, Thomas cites Augustine's famous lines condemning "the passion for inflicting harm, the cruel thirst for vengeance, an implacable and relentless spirit, the fever of revolt, the lust of power, and such like things."[13]

One problem in this formulation involves the specification of intention by means of passions. How does one measure these? One way to take this is as a warning against aggressive war, or against the temptation to demonize one's enemy. This seems insufficient, however. Evaluation of intention requires the evidence of public, observable behaviors related to specific requirements. It is for this reason that one might turn to Vitoria and Suarez.[14] For Suarez in particular, right intention is connected with or even construed as a matter of right conduct, and it is measured or expressed in terms of adherence to a number of more specific criteria. First, there are several that deal with the overarching question: In the case before us, is war just? They are thus usually classified as *jus ad bellum* criteria. A good-faith effort is required with respect to estimating costs and benefits: Are they likely to be proportionate, in the sense required by prudence and justice? Similarly with respect to reasonable hope of success: In a given case, what is the likelihood of achieving the desired goals? One should also consider the longer and shorter-term import of war with respect to the common good, thus fulfilling the criterion usually specified as the "aim of peace." And one should make a good faith effort to resolve the issues that seem to make war necessary by other, less costly and dangerous means. Thus, a just war is one that may be described as a "last" (or sometimes "timely") resort.

The two criteria usually classed as *jus in bello* are of course discrimination, that is, distinguishing civilian from military targets (with the proscription of any direct attacks on the former); and proportionality, in the sense of using only those tactics

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and weapons necessary to achieve a legitimate military end. In one sense, it seems appropriate to distinguish these from the *jus ad bellum* criteria, since they have to do with the conduct of military action in the course of war. On my count, however, they also are measures of right intention, so that a good faith effort to implement them provides one way of estimating the purposes of a particular use of force. Then, too, one might argue that an excessively rigorous distinction between *jus ad bellum* and *jus in bello* suggests that the first is mainly relevant at the outset of war, whereas the second becomes relevant only once war begins. That would seem a truncated account of just war reasoning. At least one part of estimating whether resort to war would be just—that is, in the run up to commitment of forces—has to do with whether existing resources suggest that it will be possible to prosecute war in ways that are discriminate and make use of proportionate means. Estimates of overall proportionality, reasonable hope of success, and the aim of peace may also be revisited as war progresses. As noted earlier, all the just war criteria—for both *jus ad bellum* and *jus in bello*—are relevant at every stage of argument about war: at the approach or outset, throughout the period of fighting, and after hostilities have ceased. As a social practice, just war argument involves citizens of a constitutional democracy in an ongoing attempt to evaluate a given use of force in the interests of promoting policies that are wise and just.[15]

Just War Thinking and NATO Policy in Afghanistan

In March 2012, Human Rights Without Frontiers International reported on a conference it had sponsored at the European Parliament on Afghanistan. For conference participants, it was clear that "investing in Afghanistan's future, especially in human rights projects, is the duty of the international community and the EU if we do not want ten years of efforts and billions of Euro to be wasted."[16] One need not look far to find similar views, which express one kind of worry about the prospect of a NATO—and especially American—withdrawal of forces from Afghanistan: withdraw too quickly, it is said, and a return of the Taliban to power is assured. The consequences for women, for those who have cooperated with NATO forces, and for others would be considerable.

By contrast, consider the argument advanced by Bing West in *The Wrong War*.[17] For West, coalition forces are involved in a mission that cannot be achieved. The COIN doctrine aims too high; in doing so, it imposes too many

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restrictions on men and women who are in harm's way. According to this argument, it is better to adopt a more modest goal: cutting the numbers of coalition troops down to about 30,000 or 40,000 and focusing on the training of Afghan forces. Progress could then be assessed along the way, with the goal of leaving Afghan government forces in control of some (though not all) of the country. The Afghan leadership could then sort things out with its rivals.

Again, one need not look far to find similar views. Fueled by a lack of clarity about the mission in Afghanistan, a sense of public exhaustion, and reports of widespread corruption in the Afghan government—as well as the tensions created by such incendiary incidents as the burning of Qur'ans and the killing of sixteen Afghan civilians in their homes by U.S. soldiers—many NATO allies are thinking about when to get out, and this remains a major issue for the second Obama administration.

If the just war framework is to make a contribution, it ought to prove useful in thinking through these issues. Of course, it is true that the framework has a role in other connections—the training of fighting forces in military ethics, for example. But it ought to shed light on the practice of statecraft as well, perhaps by providing clear recommendations, but more likely by pointing to matters that policy-makers and citizens alike should consider as they weigh various options. To illustrate this point, I shall proceed by asking how the NATO intervention in Afghanistan looked (and looks) from a just war perspective (1) in the fall of 2001 and early 2002; (2) in the latter part of 2008–2009, when candidate and then President Barack Obama refocused public attention on the conflict; and (3) at the end of 2012.

At the Outset: 2001–2002

In some ways, to start with the post-9/11 period is questionable. After all, we all know that American involvement in Afghanistan began with support for the *mujahidin*, who opposed the Soviets in the 1980s. It was during that time that Osama bin Laden and others learned to fight, and began to forge the network that people would learn to call al-Qaeda. And certainly the lack of attention the United States gave to Pakistan and Afghanistan in the 1990s also helped to set the stage for 9/11.

Nevertheless, one must begin at some point, and the discussion of how to respond to the 9/11 attacks is certainly an important marker. A few weeks after September 11, 2001, I received an email from David Blankenhorn, President of the Institute for American Values. He and others were working on a statement

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relating the just war tradition to public discourse about 9/11. Since the draft included comments about Muslim perspectives on the attacks, Blankenhorn wondered if I would be willing to comment, and perhaps to join a number of other scholars in signing the document. I agreed to do so, and the resulting document, *What We Are Fighting For*, appeared in February 2002. Some sixty people signed on. The statement suggested that the just war framework authorized the use of military force in Afghanistan, noting:

> Organized killers with global reach now threaten all of us. In the name of universal human morality, and fully conscious of the restrictions and requirements of a just war, we support our government's, and our society's, decision to use force of arms against them.[18]

The document concluded with a pledge to resist arrogance, jingoism, and other "harmful temptations . . . to which nations at war so often seem to yield." The text also envisioned a time when this war would end, and urged against the demonization of Muslims in particular, so that conciliation might remain within reach.

In supporting a military response, those signing *What We Are Fighting For* were in the mainstream. Public support for such an effort was strong and, with some exceptions, scholars familiar with international law thought military action would be permissible. The main contribution of *What We Are Fighting For* was its direct reference to the vocabulary of just war. In particular, the text focused on just cause, right authority, and the *in bello* criterion requiring discrimination between civilian and military targets.

What the document did *not* take up had to do with the precise kind of military response best suited to the problem. In a *New York Times* editorial on September 21, 2001, Michael Walzer provided a brief discussion of these issues.[19] At that point, Walzer preferred a focus on "intensive police work across national borders, an ideological campaign to engage all the arguments and excuses for terrorism and reject them, and a serious and sustained diplomatic effort." Should it come to military action, though, two conditions must be met: "We have to find legitimate targets—people actually engaged in organizing, supporting or carrying out terrorist activities. And we must be able to hit those targets without killing large numbers of innocent people."

Interestingly, Walzer did not seem troubled by the distinction between "targeted" killings of single individuals and more general attacks. So long as those targeted were guilty, and one could honor the *in bello* criterion of proportionality,

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either approach could be justified. The article concluded with some observations on the relationship between the goals of war and the selection of appropriate means. If the point was to stop people involved in terrorist activities, then commando raids would be better than bombs, because they were more discriminate. If, by contrast, the stated aims included disruption of terrorist networks, including the support for them provided by governments, then the use of military force might be less effective. In this case, for Walzer, police work, propaganda, and diplomacy would be preferable.

Deliberation regarding the precise aims of military action and the weighing of options seems to have been largely missing from public discourse in the aftermath of 9/11.[20] One can understand, I think, why this was so, at least in connection with a text like *What We Are Fighting For*. Those who signed the document were mostly academics specializing in religion, philosophy, international affairs, and other fields. While many were involved in politics, say, in connection with various think tanks, only a few, such as Daniel Moynihan, had extensive policy experience. Moreover, many advocates of just war thinking have tended to follow the late Paul Ramsey's oft-repeated counsel against "moralists" substituting their judgment for those holding offices authorizing them as decision-makers, on the grounds that it is difficult for ordinary citizens to know all the options available to (or the constraints confronting) those responsible for policy.

And yet this seems an important point that just war analysts ought to have pressed. If the goal of military action was to inhibit the capacity of bin Laden and others to plan operations and train operatives in Afghanistan, one might have argued for a limited strike against bases located there. If the goals included capturing or killing bin Laden and other terrorist leaders, that would have been—and certainly proved to be!—more difficult, though Walzer's comments about commando raids suggested one possible course of operation, and such a course was implemented in the raid on Abbottabad, Pakistan, in May 2011.

As it turned out, though, the goals of the operation begun in fall 2001 became expansive, including regime change and nation building. It is easy to see why this was so. The international standing of the Taliban, which was never high, degenerated following Mullah Omar's refusal to turn bin Laden over for trial. The international community would soon sponsor a collection of Afghan leaders who formed a *loya jirga* in order to forge consensus on matters related to a new regime. Having moved in this direction, allied governments and forces were now committed to that goal.

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Looking back, the lack of attention to matters that a just war thinker would be concerned with—reasonable hope of success, overall proportionality, and the aim of peace—seems striking. And, given my own view, by which a conscientious attempt to develop and craft policy in accord with such estimates is a measure of right intention, one would need to think seriously about the justice of the intervention in Afghanistan. Certainly there were reasons to judge military action as just, in the sense of providing an apt means of statecraft in response to certain challenges. But the emphasis on these reasons elided a more precise discussion of goals, of an estimate of capacities to attain them, and of the means most suited to the task.

In Medias Res: 2008–2009

In 2002 and 2003 discussion of the U.S.-led war to depose Saddam Hussein pushed the matter of Afghanistan into the background. There is much to say about the ways just war discourse did and did not illumine that conflict, but I will leave that for another day.[21]

In the U.S. presidential election of 2008, Barack Obama made a point of saying that, if elected, he would begin to draw down the numbers of U.S. troops in Iraq. Part of his rationale was that doing so would restore focus on the war that mattered, that is, Afghanistan. Iraq, Obama said, was a war of choice. Afghanistan was a matter of necessity. Soon after taking office, President Obama ordered an evaluation of the Afghan conflict. By June 2009 the verdict was in. General Stanley McChrystal's report indicated the NATO mission was in trouble: corruption was pervasive in the Afghan government; the Taliban insurgency, with some support from groups in Pakistan, had recovered from setbacks suffered in 2001–2002 and was now stronger than ever; and every valley and village in the country posed distinctive challenges, as did Afghanistan's "patchwork" of ethnic groups. Overall, said McChrystal, "the environment is so complex that there is no overarching solution." For his part, McChrystal recommended a large increase of U.S. forces and a renewed focus on the COIN strategy, which General David Petraeus had deployed with considerable success in Iraq beginning in 2007.[22]

During the summer and fall of 2009, President Obama weighed his choices. Alongside McChrystal's recommendations, some of Obama's advisers argued a different line, which was deemed a "counterterrorism" approach. The focus would be to build on the success of the Bush administration's use of drone technology in a program of targeted killings of al-Qaeda leaders. Most associated at the time with Vice President

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Joe Biden, this argument downplayed American interests in Afghanistan. For Biden and others, the post-9/11 war was really about al-Qaeda and its capacity to mount or sponsor attacks, and the use of targeted killings and drones seemed to be the best method to decrease their capacity to do so. Moreover, such attacks did not require a large number of troops or efforts associated with nation building. Finally, a more narrow focus on al-Qaeda would allow the administration to turn resources toward Pakistan, where the presence of nuclear weapons near the Indian border did represent an important strategic interest.[23]

In December 2009 the president announced his decision. In effect, he split the difference by increasing troops available to McChrystal for the implementation of COIN in Afghanistan, albeit not in the numbers the general recommended. Less publicly, the administration decided to focus more energy on the program of targeted killings, in hopes of breaking down the al-Qaeda command and control structure.

Where was the just war discussion in all this? The announcement of an increase in troops was accompanied by two much-discussed speeches. The first, given by Obama at West Point on December 1, 2009, laid out reasons for refocusing on Afghanistan. The president reminded everyone why the United States became involved there after 9/11. Citing General McChrystal's review, he indicated the need for a change in strategy, one specifically involving more troops. Overall, he argued that success in Afghanistan was critical to the security of the United States:

> I make this decision because I am convinced that our security is at stake in Afghanistan and Pakistan. This is the epicenter of violent extremism practiced by al-Qaeda. It is from here that we were attacked on 9/11, and it is from here that new attacks are being plotted as I speak. This is no idle danger; no hypothetical threat. In the last few months alone, we have apprehended extremists within our borders that were sent here from the border region of Afghanistan and Pakistan to commit new acts of terror. And this danger will only grow if the region slides backwards, and al-Qaeda can operate with impunity. We must keep the pressure on al-Qaeda, and to do that we must increase the stability and capacity of our partners in the region.

Given this, the goal of U.S. involvement would be to "deny al-Qaeda a safe haven . . . to reverse the Taliban's momentum and deny it the ability to overthrow the government . . . and to strengthen the capacity of Afghanistan's security forces and government so that they can take lead responsibility for Afghanistan's future."

Obama's speech affirmed that U.S. policy on Afghanistan would reflect American values. It did not, however, appeal to the framework of just war thinking. Rather, the leading motif seemed to be the "responsible statecraft" associated with President

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Dwight Eisenhower, that "each proposal [regarding national security] must be weighed in the light of a broader consideration: the need to maintain balance in and among national programs."[24]

The West Point speech could have been analyzed in just war terms, but it was not, or at least not to any great extent. That seems odd, given the speech Obama delivered upon acceptance of the Nobel Peace Prize, which did invoke the just war idea:

> War, in one form or another, appeared with the first man. At the dawn of history, its morality was not questioned; it was simply a fact, like drought or disease—the manner in which tribes and then civilizations sought power and settled their differences. . . . And over time, as codes of law sought to control violence within groups, so did philosophers and clerics and statesmen seek to regulate the destructive power of war. The concept of a "just war" emerged, suggesting that war is justified only when certain conditions were met: if it is waged as a last resort or in self-defense; if the force used is proportional; and if, whenever possible, civilians are spared from violence.[25]

Obama went on to say that while the concept of just war had rarely been observed, it was nevertheless important that war be regulated by moral and legal norms. In delineating these norms, he did not make use of just war criteria, however. The examples he cited were from international law. Again, one can make an argument that the Nobel speech should have received more attention from advocates of the just war tradition. But it didn't.[26] In fact, when I made some mention of the 2009 debate over counterterror and counterinsurgency policies at a September 2010 conference in Washington, D.C., several participants commented on how difficult it was to find just war analyses of Afghanistan.

I am not sure why this is the case. In 2009, I gave a number of talks to groups interested in the Afghan question. My usual tack involved tying NATO policy in Afghanistan to questions about Pakistan. I would then present a brief history of the region, with attention to the impressive diversity of linguistic, ethnic, and other groups; comments about the stability (or lack thereof) of the political regimes in these two countries; and some PowerPoint slides intended to indicate the challenging geography of the area. Outlining the COIN and counterterror strategies, I would point to the way the former focused, among other things, on matters that a just war thinker would identify with the aim of peace and *in bello* discrimination, while the latter raised questions related to *in bello* proportionality. Indeed, given the way that the discourse in Pakistan had already identified the use of drones as problematic because of collateral damage, one could have also argued that the targeted killings favored by counterterror advocates posed a

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problem with respect to the aim of peace criterion. As I spoke to these audiences, which sometimes included people familiar with the just war vocabulary, it seemed clear that most favored COIN, and worried that counterterrorism involved tactics that had at least the color of injustice. As one colleague commented at the time, should the Biden proposal carry the day, so that the United States leaned more on targeted killings than on the "clear, hold, and build" program associated with COIN, the results would be "awful."

Coming Up to the Present: 2012

Of course, the United States did lean a great deal on targeted killings in the years following Obama's announcement of troop increases for Afghanistan. By May 2010 the policy advanced far enough that Philip Alston felt it necessary (in his role as the UN Special Rapporteur on extrajudicial killings) to submit a report to the UN's Human Rights Council.[27] In part, Alston's report responded to the Obama administration's argument that the policy was consistent with international law.[28] In any case, Alston worried that drone technology was making (or would eventually make) targeted killings too easy for governments able to afford the technology. Lacking any impartial reviewer, these states might well resort to such executions without due attention to questions of process (that is, does the target really deserve death? Is the right person being targeted?), questions of measures related to proportionality, or questions about the sovereignty of states. Alston's worries aside, the program continued with proponents claiming success sufficient for Secretary of Defense Leon Panetta to claim in July 2011 that the defeat of al-Qaeda was "within reach."[29]

Recent comments by American political figures, not least the candidates during the Republican presidential primaries, lead one to the judgment that public discourse about Afghanistan has moved very little since 2009. Thus, Mitt Romney's criticisms of the Obama plan to draw down the numbers of U.S. troops in Afghanistan by 2014 suggest that the best policy involves "doubling down" in an effort to secure victory.[30] By contrast, other figures, such as Illinois Senator Richard Durbin, seem to want us to withdraw troops immediately. At the time of this writing, in fall 2012, there is much to suggest that the effort in Afghanistan is falling apart. NATO partners have begun to announce new restrictions on their involvement; problems with the Karzai administration continue; and American troops, many of them on their third or fourth deployment since 2001, are under great stress. The judgment that al-Qaeda is now defeated, whether

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accurate or not, suggests that one of the U.S. war aims has been achieved. Economic issues at home demand our attention, and U.S. policy-makers should adjust our Afghan commitments accordingly.

In this context, perhaps those of us interested in the just war framework can provide a more thorough analysis than we have to date. The symposium published in the summer 2011 issue of *Ethics & International Affairs* seems promising in this regard. In the lead article, "The Ethics of America's Afghan War," Richard W. Miller argues that the pursuit of "relentless counterinsurgency" imposes "moral costs" that are too great—particularly the "deaths and wrecked lives wrongfully caused by the United States."[31] Miller argues that policy-makers should draw down the numbers of foreign troops in Afghanistan, and instead focus on the training of and support for indigenous Afghan forces. At the same time, he says, the United States and its allies should broker negotiations between insurgents and the Karzai regime, with the ultimate goal of having the two sides form a coalition government. The symposium includes a number of responses to Miller. Fernando Tesón argues that Miller's approach constitutes "enabling monsters," in the sense that the record of the earlier Taliban regime ought to preclude their participation in any future coalition. Jeff McMahan's essay focuses on proportionality, and suggests that Miller's concern about "moral costs" might actually suggest a different course than the one he recommends, since it may ultimately be the case that COIN's "clear, hold, and build" strategy allows for greater delivery of public health and other services than would be the case under a new Afghan regime.[32]

Interestingly, Miller complains of certain shortcomings in just war thinking, even as he makes use of portions of its framework.[33] Consequently, in their respective contributions to the symposium, both Darrel Moellendorf and George Lucas argue that all of Miller's points can be articulated through the standard just war criteria.[34] Lucas, in particular, draws attention to a point I would stress, which is that Miller's focus on "moral costs" seems to imply a more narrowly moral view of the just war framework. On Lucas's account, as on mine, the framework is designed to foster wise statecraft. This probably points to a very fundamental difference between Miller and some others regarding the so-called "presumption" on which just war thinking builds. Is it a presumption against war, or perhaps against killing, or is it rather a presumption against injustice, or perhaps in favor of justice?[35]

It seems to me that an evaluation of NATO policy in Afghanistan stands in need of a just war analysis, along the following lines. At present, the question

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of right authority is probably not an issue. For most observers, that has been settled since 2001. Similarly, there remains a consensus that a just cause for military intervention existed at least with respect to the objective of delimiting the ability of al-Qaeda to make use of Afghanistan as a safe haven. Whether the NATO presence was justified for the more expansive program that began to take shape following the demise of the Taliban regime depends, I think, on an estimation of the relation between the goal of establishing a secure and stable Afghan government and the aforementioned attempt to weaken al-Qaeda. Since I judge that the evidence indicates (as it probably did at several points along the way) that achieving this goal in any strong sense is unlikely, it seems to me that the criteria of overall proportionality and reasonable hope of success suggest a revision in the coalition approach. If one is examining the criterion of the aim of peace, one aspect of which must involve consideration of the continuing impact of the involvement of the United States and others on the regional and more broadly the international order, one might well argue, as George Lucas does, that some other, more pressing problems (say, related to nuclear proliferation) are going wanting. It is also unclear that the continuation of NATO operations in Afghanistan does much good with respect to U.S. relations with Pakistan, which are badly in need of repair.

Given such an assessment, one might well argue that, while military action was justified for certain purposes following the 9/11 attacks, the mission expanded in ways that were probably inappropriate, and that policy-makers should seek an alternative. Perhaps that would look like Miller's negotiations aimed at a coalition government, though one has to think that the moment it becomes clear that the United States is drawing down its numbers, the incentives for the Taliban to compromise become less compelling.[36] In any case, the judgment that war in Afghanistan is not at present an apt means of statecraft seems plausible. Indeed, since on my count the initial expansion of the mission in 2002 actually seems to have proceeded without the kind of good faith attempts to estimate proportionality, probability of success, and the aim of peace required by the criterion of right intention, NATO's role in Afghanistan may also involve injustice in that regard.[37]

Conclusion

If we construe just war argument as a social practice, what should we say about the case of Afghanistan? As presented here, the evidence is mixed. Just war argument helped some to make a case for the justice of a NATO initiative. In the post-9/11

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environment, this was not a difficult case to make, though the role of the just war vocabulary in helping citizens to articulate their views is worth noting.

At the same time, advocates of just war thinking missed the opportunity to press questions about the precise aim of the NATO intervention and, with it, the chance to encourage a debate regarding overall proportionality, reasonable hope of success, and the aim of peace. Initially, it seems that the overwhelming consensus regarding the response to terrorists, coupled with the early success of the allied forces, enabled a kind of drift into the large-scale mission associated with nation building. The sense that the estimates required by just war criteria required details available only to a select few also probably contributed, in this case as in others, to a practice of deference toward policy-makers. In retrospect, those making decisions did not deserve such deference.

It is often said, in keeping with Ramsey's observation, that citizens ought not to substitute their judgment for that exercised by officeholders. After all, constitutional provisions invest those in positions of authority with power to make decisions with respect to war. Moreover, the just war framework assigns the right of war to those charged to care for the common good. In this sense, decisions about the precise goals of a particular use of military force belong to office holders, as do assessments of proportionality and the other "prudential" criteria. Then, too, it is simply a fact that the kinds of estimations required on my account of just war thinking are tricky. They involve probabilities. In the current security environment, where an enemy such as al-Qaeda is difficult to categorize—is it an insurgency? a terrorist group? a hybrid of the two?—and thus where it is difficult to craft a consistent strategy, how does one define success? How does one estimate the impact of fighting with respect to a balance between stability and justice in Afghanistan, in the region, and in the world?

Nevertheless, as a social practice, the just war argument frames a debate among citizens. While it is true, at least in many cases, that policy-makers have access to information not available to ordinary citizens, and that judgments are difficult, it is nevertheless proper for citizens to press the concerns associated with all of the just war criteria. Officials who say that their presentation of evidence must be restricted for security reasons have a point, but it only goes so far. It is the right and duty of citizens to press office holders in ways that encourage accountability. To give and to ask for reasons regarding policies is a necessary part of democratic practice.

In the case of Afghanistan, it now seems clear that the mission should be redefined. It also seems that those speaking in just war terms ought to revisit

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the place of the criteria that are sometimes called "prudential." If one takes, as I do, the position that these are actually measures of right intention, and if one takes the entire list of just war criteria as an attempt to encourage policies that are both wise and just, then one lesson from Afghanistan seems to be that a greater willingness to press these criteria can be an important contribution of just war argument as a social practice.

NOTES

[1] I develop the points mentioned in this paragraph at greater length in John Kelsay, "The 'Triumph' of Just War Tradition and the Possibility of 'Imperial Overstretch,'" in Anthony Lang, Cian O'Driscoll, and John Williams, eds., *Just War: Authority, Tradition, Practice* (Washington, D.C.: Georgetown University Press, 2013, forthcoming), n.p.

[2] See Jeffrey Stout, *Democracy and Tradition* (Princeton, N.J.: Princeton University Press, 2004), esp. pp. 270–86. For Brandom, the main text is Robert Brandom, *Making It Explicit: Reasoning, Representing, and Discursive Commitment* (Cambridge, Mass.: Harvard University Press, 1994), in which pp. 623–50 provide a succinct account; as well, see Robert Brandom, *Tales of the Mighty Dead: Historical Essays in the Metaphysics of Intentionality* (Cambridge, Mass.: Harvard University Press, 2002), esp. pp. 1–21 and 210–34.

[3] Stout and Brandom connect the notion of social practice to an expressive account of normative discourse. In this, they follow some aspects of Hegel's account. I do not think this means that other accounts or theories of ethics are ruled out. Here, I wish to stress the idea that speaking of just war argument as a social practice connects it with the practice of citizenship in a constitutional democracy. As individuals or as members of groups that operate at the level of civil society, citizens may explain the nature and purchase of just war discourse in a variety of ways—for example, in connection with an account of the Christian life, or of concern for human rights. And I do not see any reason why, in principle, such citizens ought not to mention such matters when they participate in public debate. As a matter of democratic practice, one ought to expect many inputs into an argument about a use of military force. One will recognize just war argument with reference to a particular vocabulary, which many may utilize—viz., the criteria of *jus ad bellum* and *jus in bello*.

[4] Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 2000 [1979]), p. xvii.

[5] Brandom, *Tales of the Mighty Dead*, p. 12.

[6] Ibid.

[7] See the account in James Turner Johnson, *Ideology, Reason, and the Limitation of War: Religious and Secular Concepts* (Princeton, N.J.: Princeton University Press, 1975).

[8] Stout, *Democracy and Tradition*.

[9] An anonymous reviewer asks whether or not the account provided here should raise concerns about relativism and/or historicism. Interestingly enough, another reviewer thinks the account suggests a universality that is not explicitly articulated. I cannot deal fully with these issues here, given constraints of time and space. I will simply note that something like the just war criteria seems to appear in a number of cultural settings, connected with the need of human communities to accomplish a regulation of armed force and to develop a vocabulary associated with that task. The fact that such vocabularies may come to be associated with and perhaps qualified by a variety of religious and moral frameworks may suggest that we are dealing with something that is "practically" universal (because unavoidable), but "theoretically" particular or susceptible to a plurality of justifications.

[10] See esp. the discussions in Thomas Aquinas, *Summa Theologica*, IIaIIae, questions 47–56 (on prudence) and 57–122 (on justice). For a convenient version, see the translation of the New England Dominican Fathers at www.newadvent.org. It is usually remarked that Thomas' famous and succinct statement of just war criteria actually occurs in connection with his account of the virtue of charity. This is quite true. Nevertheless, his discussions of political prudence (for example, at 47.10 and 50) make clear that this virtue, in connection with justice, is critical with respect to determinations of when war serves the common good.

[11] Paul Ramsey, *The Just War: Force and Political Responsibility* (Savage, Md.: Rowman & Littlefield, 1983 [1968]), for example at p. 8.

[12] Walter Russell Mead, *God and Gold* (New York: Random House, 2007).

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[13] Thomas Aquinas, *Summa Theologica*, IIaIIae, question 40, art. 1, as in Gregory Reichberg, Henrik Syse and Endre Begby, eds., *The Ethics of War: Classic and Contemporary Readings* (Oxford: Blackwell, 2006), in which a good selection of Aquinas' comments on war are found in ch. 15, pp. 169–99.

[14] Ibid. A convenient selection of passages may be found at pp. 288–332 and 339–70.

[15] To clarify, my analysis of just war as a social practice focuses on constitutional democracies, where established patterns of action allow citizens to engage in argument regarding state policy. It is of course true that historic interpreters such as Thomas Aquinas developed their accounts of just war reasoning in very different social and political contexts and, as indicated in note 9, that one may identify analogues of the just war framework in a number of cultural settings. In this sense, the vocabulary has relevance for settings other than constitutional democracies. I do think, however, that it is important to describe the ways the criteria of *jus ad bellum* and *jus in bello* function in *particular* social and political contexts. Thus, a focus on constitutional democracies seems important.

[16] Cf. www.americasradionewsnetwork.com/human-rights-improvement-in-afghanistan-since-fall-of-taliban.

[17] Bing West, *The Wrong War: Grit, Strategy, and the Way Out of Afghanistan* (New York: Random House, 2011).

[18] The text is conveniently reprinted in Jean Bethke Elshtain, *Just War Against Terror: The Burden of American Power in a Violent World* (New York: Basic Books, 2003), pp. 182–207; the passage quoted is at p. 192.

[19] Michael Walzer, "First, Define the Battlefield," *New York Times,* September 21, 2001; www.nytimes.com/2001/09/21/opinion/first-define-the-battlefield.html.

[20] Let me make clear that *What We Are Fighting For* did call for right conduct in the sense of the use of means consistent with *jus in bello* norms. It did not address the kinds of questions raised in Walzer's op-ed, however; nor did the statement press the kinds of questions associated with overall proportionality, reasonable hope of success, and aim of peace. In that regard, the statement issued November 14, 2001, by the U.S. Conference of Catholic Bishops is noteworthy: "In light of the Church's teaching that the use of arms must not produce disorders graver than the evil to be eliminated, the effect of military action on the Afghan people must be closely monitored on an ongoing basis." And a few lines later: "Probability of success is particularly difficult to measure in dealing with an amorphous, global terrorist network. Therefore, special attention must be given to developing criteria for when it is appropriate to end military action in Afghanistan." See U.S. Conference of Catholic Bishops, "A Pastoral Message: Living with Faith and Hope after September 11," November 14, 2001; www.usccb.org/issues-and-action/human-life-and-dignity/september-11/a-pastoral-message-living-with-faith-and-hope-after-september-11.cfm.

[21] James Turner Johnson, in *The War to Oust Saddam Hussein* (Savage, Md.: Rowman & Littlefield, 2005) covers the first phase of the conflict very well. The U.S. Conference of Catholic Bishops' statement opposing the war emphasized the "presumption against war" characteristic in their formulations of just war argument, and indicated that "resort to war, under present circumstances and in light of current public information, would not meet the strict conditions in Catholic teaching for overriding" that presumption (U.S. Conference of Catholic Bishops, "Statement on Iraq, 2002," November 13, 2002; www.usccb.org/issues-and-action/human-life-and-dignity/global-issues/middle-east/statement-on-iraq.cfm). On Johnson's account, the Bishops' understanding of the just war framework may be characterized as a "just war pacifism," in that there will always be some reason to count war as unjust. However, the post-9/11 "A Pastoral Message" did in fact support the NATO intervention in Afghanistan (see note 20). Michael Walzer's *Arguing About War* (New Haven, Conn.: Yale University Press, 2004) collects several of his shorter pieces on Iraq. All of the foregoing contribute to the early debate, however. There is much to say with respect to the fighting in Iraq after the fall of Saddam through the surge of 2006 and 2007 and to the present, and I hope to write about this in a future essay.

[22] Stanley McChrystal, "Commander's Initial Assessment: 30 August 2009"; media.washingtonpost.com/wp-srv/politics/documents/Assessment_Redacted_092109.pdf?hpid = topnews.

[23] See, among others, Peter Baker, "Biden No Longer a Lone Voice on Afghanistan," *New York Times,* October 13, 2009; www.nytimes.com/2009/10/14/world/14biden.html.

[24] See Barack Obama, "Remarks by the President in Address to the Nation on the Way Forward in Afghanistan and Pakistan" (remarks, United States Academy, West Point, New York, December 1, 2009); www.whitehouse.gov/the-press-office/remarks-president-address-nation-way-forward-afghanistan-and-pakistan.

[25] See Barack Obama, "Remarks by the President at the Acceptance of the Nobel Peace Prize" (remarks, Oslo Hall, Oslo, December 10, 2009); www.whitehouse.gov/the-press-office/remarks-president-acceptance-nobel-peace-prize.

[26] One exception to this is Cian O'Driscoll, "Talking about Just War: Obama in Oslo, Bush at War," *Politics* 31, no. 2 (June 2011), pp. 82–90.

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[27] See United Nations Human Rights Council (HRC), A/HRC/14/24/Add.6, "Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston," May 28, 2010, www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add6.pdf.

[28] Harold Hongju Koh, "The Obama Administration and International Law" (speech, Annual Meeting of the American Society of International Law, Washington, D.C., March 25, 2010); www.state.gov/s/l/releases/remarks/139119.htm.

[29] See, among others, Craig Whitlock, "Panetta: U.S. 'within reach' of defeating al-Qaeda," *The Washington Post*, July 9, 2011; www.washingtonpost.com/world/panetta-us-within-reach-of-defeating-al-qaeda/2011/07/09/gIQAvPpG5H_story.html. In retrospect, one of the factors missing in my own conversations during 2009 could be put this way: When Vice President Biden and others argued for targeted killings and other counterterror measures, rather than for COIN and the building of Afghanistan, they did so in part by expressing doubts that the Afghan policy could succeed. If one likes, one could say that they agreed with General McChrystal's assessment of the state of affairs ("The environment is so complex that there is no overarching solution"). They did not share his faith—or perhaps his hope—that given greater resources and stricter adherence to COIN, the situation could be reversed.

[30] See David Sanger, "Is There a Romney Doctrine?" *New York Times*, May 12, 2012; www.nytimes.com/2012/05/13/sunday-review/is-there-a-romney-doctrine.html?pagewanted=all.

[31] Richard Miller, "The Ethics of America's Afghan War," *Ethics & International Affairs* 25, no. 2 (Summer 2011), p. 103.

[32] Fernando Tesón, "Enabling Monsters: A Reply to Professor Miller," *Ethics & International Affairs* 25 (November 2011), pp. 165–82; and Jeff McMahan, "Proportionality in the Afghanistan War," *Ethics & International Affairs* 25 (November 2011), pp. 143–54.

[33] Miller, op cit.

[34] George R. Lucas, Jr., "The Strategy of Graceful Decline," *Ethics & International Affairs* 25 (November 2011), pp. 133–42.

[35] This allows for a brief comment on the sense in which Miller's account of the just war framework might be characterized as "more narrowly moral" than my own (or, as I read his essay, that of George R. Lucas, Jr.). Miller's essay does engage in considerable reflection on political and other realities, but seems to refer to these in the manner of complements or supplements to just war reasoning. If I read the essay correctly, the issue of killing, or more broadly injury, is the heart of just war reasoning for Miller. Hence, if one wants to render a political or policy judgment, one must refer to things that are outside the purview of the just war tradition. On my view, the political aims of the framework—by which I mean to highlight its role in fostering statecraft that is both wise and just—mean that just war reasoning involves attention to a wide range of values. This range includes concerns about killing and injury, but also involves reasoning about the impact on a state's ability to secure the welfare of its own citizens, the impact of various courses of action on international order, and military and strategic assessments related to the probability of success. The kinds of analyses needed to assist in judgments about such matters thus becomes part of just war reasoning, rather than suggesting that "current just war theory does not provide sufficient guidance in crucial tasks."

[36] On this point, see Jack Keane, "Al-Qaeda is Making a Comeback," *The Wall Street Journal*, Tuesday, October 23, 2012, p. A17.

[37] I do think the instatement of COIN helped correct one problem that emerged during the years in which U.S. focus turned to Iraq. That is, it appears that NATO forces prior to 2009 relied overmuch on air strikes, perhaps in violation of the *in bello* requirement of proportionality. In contrast, UN reports now consistently indicate that most Afghan deaths are the result of actions taken by insurgents—a fact that no doubt explains the various statements in which Mullah Omar has urged those associated with him to take greater care regarding harm to civilians. Insofar as Miller's reference includes deaths of U.S. combatants, I would place this in the context of an assessment of overall proportionality; it certainly is a factor in adjudicating the justice of (as Miller puts it) a strategy of "relentless" counterinsurgency.

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