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THE JUST WAR IDEA: THE STATE OF THE QUESTION

By James Turner Johnson

I. Setting the Context

One of the most striking and most important developments in American moral discourse on uses of military force over the past forty-odd years has been the recovery and practical use of the idea of just war to guide moral analysis and judgment. As a result, various forms of just war discourse can be found today in religious, philosophical, military, political, and legal contexts, and while there is an important common substratum uniting these, there are also notable differences and even tensions. What should be said about this? How should these contemporary forms of just war reasoning be tested against historical just war reasoning (which has also taken diverse forms), or indeed, should it be tested in this way at all? In particular, what is to be said about new themes that have appeared in recent just war discourse and have in some versions of the contemporary just war idea become the principal moral criteria for whether a resort to force is justified or not? In short, what should be the parameters within which contemporary just war reasoning develops?

This essay examines the idea of just war in two ways. Section I is historical and thematic, identifying major benchmarks in the recent recovery of just war thinking, exploring characteristic elements in each, and setting them against the deeper just war tradition which first came together in the Middle Ages and has continued to develop in the modern period. Section II identifies and analyzes several major themes that have been put forward in contemporary just war discourse, judging them by reference to the deeper tradition of just war. Throughout the essay, I argue for a contemporary conception of just war that is solidly grounded in this deeper moral tradition. This leads me to be critical of certain elements in the recent recovery and restatement of just war thinking. My aim, in short, is to answer not only the question of what the contemporary just war idea is, but also what it ideally should try to be.

In the United States, before the contemporary recovery of just war thinking began, moral discourse on war was largely polarized between various forms of pacifist rejection of all war as inherently evil and an embrace of total war, expressed sometimes in terms of political realism and at other times in the language of crusade, as the necessary means of combating and wiping out evil when thrust upon us. Indeed, these two

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poles tended to converge in practical terms, since the pacifist's rejection of war in any form, for whatever reason, as inherently evil left nothing to say about possible moral limits to war once it had begun, while the idea of total war ruled out such limits in principle. Thus, the carnage in the trenches of World War I, the destruction of entire cities by strategic bombing in World War II, and even the introduction of atomic weapons could be looked at, from the pacifist's perspective, as evidence of the inherently evil nature of war, while from the opposite end of the spectrum they could be justified as what was necessary to defeat the aggressors who had started the war. What was missing in these two extreme approaches to moral discourse about war was a conception of the use of force that accepted it as a sometimes necessary tool of good statecraft, but at the same time set strict yet meaningful moral restraints on the resort to force and the practical application of such force.

A. The shaping of the classical just war tradition

There was, of course, an old and deeply embedded tradition in Western culture that understood war in a very different way from either of the polar opposites I have mentioned. This was the just war tradition. On the terms of this tradition, the use of armed force might serve good or evil depending on whether it was undertaken on the authority of a sovereign, that is, a person or persons responsible for the common good of his/her/their political community, whether it was undertaken to protect that common good, or the broader fabric of relations on which all political communities depended, against injury or the threat of injury, and whether it was undertaken out of a right intention—not to do an injustice to another but to seek to preserve or establish peace. The deepest roots of this tradition reach back into the history of biblical Israel and into the thought and practice of classical Greece and Rome. A specifically Christian version of it traces at least to Augustine in the fourth and early fifth centuries. A coherent and systematic form of this tradition came together in the Middle Ages, over roughly the three centuries from the canonist Gratian's magisterial collection, the *Decretum,* in the mid-twelfth century to the end of the Hundred Years War in the mid-fifteenth century. At the beginning of the modern period, seminal thinkers from Francisco de Vitoria (1492–1546) to Hugo Grotius (1583–1645) assumed the terms of this tradition and applied them to the political conditions of their own times.

The tradition these thinkers inherited had taken shape as a broad cultural consensus, one whose content had been shaped by inputs from a wide variety of sectors of medieval culture: church law and theology; secular law, including the recovery of the Roman legal concepts of *jus gentium* and *jus naturale;* the code of knighthood (the chivalric code); works of political theory, especially the literary tradition defining the

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responsibilities of the good ruler; and the practical experience of government and of warfare.

In its classic form as it had come together by the end of the Middle Ages, the just war idea consisted of two parts: one defining when resort to armed force is justified (later called the *jus ad bellum*), the other defining right conduct in the use of armed force (the *jus in bello*). The *jus ad bellum* included three requirements: that only someone in sovereign authority, and thus responsible for the common good of the political community, could justly authorize resort to armed force; that there must be a just cause, specifically defense of the common good against serious injury, recovery of something wrongly taken, or punishment of wrongdoing; and that resort to armed force must manifest right intention—not aggression, domination, implacable enmity, just plain cruelty or the like, but the intention to protect, restore, or establish peace. These three requirements corresponded directly with the three ends of good politics in the Augustinian tradition of political thought: order, justice, and peace. Thus defined, the justified use of armed force was understood to be a tool for aiding the achievement of these ends and protecting them when established. All other uses of force were by definition unjust, notably including all uses of armed force by private persons on their own authority and all uses of force manifesting tyrannical intent. The *jus in bello* included two major elements: a listing of classes of persons who normally, by reason of their personal characteristics (age, gender, degree of mental or physical competence) or social function, were to be regarded as noncombatants and not to be directly, intentionally attacked during a just war; and some rather moribund efforts to define certain means of war as impermissible because of their inherently indiscriminate or disproportionate effects.

B. Development of the just war idea in the modern period

Beginning in the sixteenth and early seventeenth centuries, this unified common tradition broke apart and subsequently developed in separate streams of thought and practice. Grotius effectively began one of these separate streams in his *De Jure Belli ac Pacis* (1625), where he took the inherited tradition of just war, reinterpreted it in terms of natural law and the common practices of nations, and refashioned it into a theory of the law of nations or international law. Another distinct stream developed within the military sphere, with such writers as Pierino Belli (1502–75) focusing on that portion of the just war tradition having to do with conduct in war and, at the same time, with the emergence of codes of military discipline that remade just war ideas from a system of morality into a set of rules for disciplined conduct under arms. A third stream led into the realm of secular philosophy, eventuating in the "perpetual peace" movement of the Enlightenment era and effectively losing contact with the just war idea as reflecting perennial necessities of statecraft. In the

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religious sphere, Protestant theology gradually lost conscious sight of just war tradition, while Catholic thought maintained it as a doctrine but generally paid no attention to it.

With the rise of the absolutist state beginning in the seventeenth century, the just war *jus ad bellum* decayed into the idea of a *liberum jus ad bellum,* the right of the absolute sovereign to initiate war for reasons of state. At the same time, the requirement of a public declaration of war came to be stressed, so that others could judge the decision to go to war and react as they might. The moral restraints of the just war *jus ad bellum* thus effectively disappeared, being replaced by calculations of interests and the relative likelihood that other states might respond to a declaration of war by making war against the initiator. At the same time, and perhaps in some sort of compensation for the greater freedom to initiate war implied by the *liberum jus ad bellum,* greater attention was given to the elements of the *jus in bello:* protection of noncombatants and limits on the means of war, including both weapons and tactics. The practice of limited war (or "sovereigns' war," as it has sometimes been called) during the eighteenth century illustrates both these developments. The emergence of both the theory and practice of total war in the early nineteenth century temporarily eclipsed this emphasis on limiting the conduct of war, but by the time of the American Civil War it was once again possible for writers on international law to speak of "the laws and customs of war," by which they meant effectively the content of the just war *jus in bello:* avoidance of harm to noncombatants and a sense that the means of war should not be unlimited. The political theorist Francis Lieber's *Guerilla Parties* (1862) and *Code* (1863), as well as the U.S. Army's *General Orders No. 100 (1863),* based on Lieber's *Code,* put all this into the form of military law and rules of engagement. At about the same time, the first Geneva Convention (1864) put one kind of noncombatant protection—amelioration of the condition of the wounded in armies fighting each other in the field—into the form of an international agreement. The subsequent development of a positive law of armed conflict in international law reflects both Lieber and the first Geneva Convention. In the United States military, *General Orders No. 100 (1863)* initiated a way of thinking about the government of military forces in combat that has eventuated in the present-day Code of Military Discipline, specific codes of conduct in all the service branches, and increasingly detailed rules of engagement for specific military contexts.

As this illustrates, the military and legal spheres have continued to develop their distinctive approaches to regulating the conduct of war; yet this history also illustrates a substantive dialogue between these two spheres. It also shows the significant continuing presence of just war tradition in both. James Brown Scott in the 1930s, and more broadly the Carnegie Institution's series *Classics of International Law,* demonstrated the

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historical linkage between just war tradition and international law at the beginning of the modern period.[1] For anyone who knows just war tradition, however, the thematic and structural content of the positive law of armed conflicts demonstrates the connection in its own way: in both just war tradition and the law of armed conflicts, there are lists of classes of persons defined as noncombatants, together with prohibitions on harming them directly and intentionally; in both, there are limits on the means of war, including bans on weapons and restrictions on how acceptable weapons are to be used. The same linkage is also visible in the military code and in the rules of engagement for recent conflicts involving United States forces.

As regards the resort to war, the picture is somewhat different. Here the convergence has been between international law and the philosophically based version of just war thought that produced the "perpetual peace" literature of the Enlightenment era. That literature sought to limit resort to force by individual states through creating a new super-state structure for international relations, so that only under the authority of the super-state institutions could armed force be rightly used. At the same time, the "perpetual peace" tradition aimed toward abolishing war, seeking instead to settle all international disputes through arbitration. It was but a small step conceptually to the League of Nations (1920), the Kellogg-Briand Pact (1928), and the United Nations (1945). What is lost here is the just war tradition's realistic focus on the possibility of genuine order, justice, and peace only in the context of particular political communities and the tradition's effort to define the use of armed force in terms of the responsibility of the sovereign to protect the common good. The line of development in both this philosophical tradition and in positive international law has responded to the excesses of the absolutist state, which rests on assumptions about sovereignty and international order that can be traced to the Peace of Westphalia in 1648.[2] These assumptions are inherently problematical from the standpoint of just war tradition. But together they establish a context in which just war discourse about the resort to armed force is difficult, because it goes against the assumptions about the state

[1] See particularly James Brown Scott, *The Spanish Origin of International Law* (Oxford: Clarendon Press; London: Humphrey Milford, 1934). Scott (1866–1943), one of the most prominent international lawyers of his generation, was a professor of law at Columbia University, George Washington University, and the University of Chicago, a United States delegate to the second Hague Conference (1907), and a trustee and secretary of the Carnegie Endowment for International Peace (1910–40), where he oversaw the creation of the series *Classics of International Law.*

[2] The Peace of Westphalia ended the Thirty Years' War, the last, longest, and most destructive of the wars of religion following the Protestant Reformation. It is generally regarded as establishing the pattern for international relations in the modern period, based on formally equal territorial states, with difference of religion repudiated as a just cause for war. Its conception of sovereignty, defined by recognized rule over a particular territory and the people living in it, provides the basis for the international system centered on the United Nations.

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and international order that are embodied in the effort to abolish war and to create an international institution superior to individual states.

To return more explicitly to the matter of why just war discourse disappeared from moral reflection on war and armed force during the modern period, the developments I have just sketched show how philosophical thought on these matters moved in the direction of an internationalist pacifism. At the same time, there was also a movement in exactly the opposite direction, toward justifying the absolutist state and its totalistic quest for power by whatever means, a movement that produced both Nazism and Stalinism. Taken along with the development of internationalist pacifism, this shows exactly the kind of polarization I identified earlier, between rejection of war as such as inherently evil and an embrace of total war. In the United States, internationalist pacifism became an important element in the pacifistic rejection of all war, while the reaction to Nazi and Stalinist totalitarianism fueled the idea that war against such enemies—and by extension, all war—should be prosecuted without limits.

Religious moral thought, as I indicated earlier, effectively forgot its just war heritage over the course of the period from the seventeenth century through the middle of the twentieth, following along the same lines as sketched out above for internationalist philosophy and international law. At the same time, other forms of pacifism unique to the religious context also grew. Christianity has a long tradition of sectarian, or world-rejecting, pacifism. In not entirely self-consistent but psychologically persuasive ways, sectarianism's critique of the state could recognize common cause with the critique of the state in internationalist utopianism. British historian Martin Ceadel has studied this closely for Christian pacifism in England in the context of the two World Wars; what he found was convergence of very unlike forms of pacifism prior to the wars, followed by a falling apart of the convergence during the wars themselves, and then a coming together again after the wars ended.[3] The American pattern seems to have been the same.

C. The contemporary recovery of the just war idea

It is possible to identify three important benchmarks in the contemporary recovery of the just war idea. The first is the work of Paul Ramsey in the 1960s. In two books, *War and the Christian Conscience*[4] and *The Just*

[3] Martin Ceadel, "Christian Pacifism in the Era of Two World Wars," in W. J. Sheils, ed., *The Church and War* (Oxford: Basil Blackwell for the Ecclesiastical History Society, 1983), 391–408.

[4] Paul Ramsey, *War and the Christian Conscience: How Shall Modern War Be Conducted Justly?* (Durham, NC: Duke University Press, 1961). The context into which this book appeared was the debate over nuclear weapons, deterrence strategy, and the possibility of use of nuclear weapons in war.

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War: Force and Political Responsibility,[5] Ramsey developed and used a version of just war thinking to challenge both liberal Christian pacifism and the political realism of the policy community in the context of the debates over nuclear weapons and, to a much lesser degree, the war in Vietnam.[6] He based his reconstruction of just war theory fundamentally on the theology of Augustine. To the liberal Christian pacifists, he made an argument based on the obligations of Christian love, as he read this through Augustine and through the New Testament story of the good Samaritan. Love of neighbor, Ramsey argued, does not imply that Christians should stand aside when others are being threatened or harmed. Rather, such love implies what Ramsey called a "twin-born" attitude toward the use of force: first, permission to use force to protect the innocent neighbor from such harm; second, limitation on the force used, because the assailant is also a neighbor whom Christians are commanded to love. The concept of love as permitting, and even requiring, the use of force to protect the neighbor set the use of armed force once again on the table of moral possibilities for Christian ethics; fundamentally, it was the basis for a *jus ad bellum.* Similarly, the theme of limitation served as the basis for Ramsey's *jus in bello,* which he developed in terms of two moral principles, discrimination and proportionality. Discrimination, or not directly and intentionally harming noncombatants, he defined as an exceptionless moral rule deriving directly from the obligation of love. Proportionality, by contrast, required the operation of moral prudence, since it implied a calculation of the likely effects of a particular use of force.

In entering the secular policy debate, Ramsey shifted his language somewhat. There he argued that both the permission to use force and the limitation on such force follow from the nature of politics itself: as he put it, force "is inseparable from politics' *proper* act of being politics, inseparable from the well-being of politics, inseparable from the human pursuit of the national or the international common good by political means."[7] The principles of discrimination and proportionality equally follow from consideration of the orientation of good politics toward the common good. Now, these two arguments seem quite different, but for Ramsey

[5] Paul Ramsey, *The Just War: Force and Political Responsibility* (New York: Charles Scribner's Sons, 1968). This book ranged more widely than its predecessor, still treating the questions of nuclear deterrence and possible use of nuclear weapons in war, but also including sections on political ethics, on the implications of the Second Vatican Council's treatment of war, and on insurgency warfare and the war in Vietnam. All in all, it is a fuller presentation of Ramsey's thought on war in the frame of Christian theology and political ethics than Ramsey's 1961 book.

[6] Ramsey (1924–94), one of the leading Christian ethicists of the twentieth century and longtime professor of religion at Princeton University, over a career that began in the 1940s and ended five decades later, did seminal work on a variety of topics, including the central place of love in Christian ethics, the relationship of love and justice in human communities, and the ethics of medical care, as well as the ethics of the political use of force, the frame within which he developed his conception of just war.

[7] Ramsey, *The Just War,* 5.

they were connected: though the latter argument does not explicitly recognize the moral demands of love, he understood love as embedded in the order of things after the manner of Augustine's argument in *The City of God*, so that the goals of good politics are the same as those of an individual ethic of love of neighbor.

Ramsey only relatively infrequently drew out elements of his *jus ad bellum* and never developed it systematically, arguing that the choice to resort to force is a matter for good statecraft, not for a moral theoretician. Yet he had no inhibition about developing at length the implications of his *jus in bello,* which he regarded as bearing not only on the policy sphere but also on the sphere of personal morality. The result was a somewhat one-sided just war theory that spoke powerfully and directly about the obligation not to harm noncombatants and to limit overall destruction but only treated the question of moral resort to force in general terms.

Ramsey also did not seek to engage the historical just war tradition in his effort to recover the just war idea. He wrote as a theologian interpreting a fundamental Christian theological ideal and as a political philosopher interpreting classical understandings of politics. This is evident, I suggest, in his definition of the limits to be observed in using force by means of two moral principles, whereas the classical tradition had defined its limits in terms of concrete listings of categories of persons not normally to be targeted in war and concrete efforts to ban or restrict specific means of war. Military and legal usage, as I have shown above, held on to the language and method of the classical just war tradition on the *jus in bello,* but Ramsey, reaching back over the historical tradition to the theology of Augustine, produced a more generalized and simultaneously more abstract conception of the *jus in bello.*

While Ramsey's work initiated the recovery of just war thinking in American moral discourse on war, the particular form and focus of his work also left a legacy of problems for that discourse as it has subsequently developed. Two problems in particular should be noted. The first follows from Ramsey's reliance on the idea of moral principles rather than the concrete restrictions found in the historical tradition. While the principle of discrimination translates fairly directly into identifying classes of noncombatants who should never be directly, intentionally targeted, its lack of specificity left the door open for arguments that in modern war there are no noncombatants. The difficulty for the principle of proportionality has been that the concept is harder to keep focused. As a result, in subsequent usage the concept of proportionality has been made to mean essentially whatever one might want it to mean in a given argument. The second problem follows from Ramsey's emphasis on the *jus in bello* and relative lack of focus on the *jus ad bellum.* This has opened the door to a widespread phenomenon in recent just war discourse, making the *jus in bello* categories do *jus ad bellum* duty. Specifically, some have argued, if discrimination and proportionality are moral obligations in the

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use of force, then if they are not observed or cannot be expected to be observed, there can be no just resort to force. Ramsey himself opposed this line of argument, calling it a *bellum contra bellum justum,* that is, a "war against just war." Nonetheless, it has provided a powerful tool in the hands of opponents of nuclear weapons and of all modern war as inherently indiscriminate and disproportionate, and thus never able to be just.

The second major benchmark in the recovery of just war thinking for American moral discourse on war is Michael Walzer's 1977 book *Just and Unjust Wars.*[8] In the preface, Walzer explicitly embraces the goal of such a recovery: "I want to recapture the just war for political and moral theory."[9] Like Ramsey, Walzer's analysis did not engage historical just war tradition. Unlike Ramsey, however, Walzer was not interested in making connections with either the requirements of love of neighbor or with classical political theory as the basis of his analysis. Rather, he proceeded through a series of close looks at specific historical cases, first to establish war as a moral reality, then to treat in order the questions of justified resort to war, conduct in war, and individual responsibility in war. The result was a conception of just war that treated the justification of force as a response to an unambiguously recognizable evil (aggression, harm to the innocent) and the limits on force as avoidance of evils similarly easily recognized (rape, war against civilians, torture, terrorism). Walzer's book placed discussion of the just war idea squarely in the frame of philosophical and political-theoretical debate. Its effort to ground just war in universally recognizable moral reactions gave it broad appeal, and the sensitivity with which Walzer drew out the implications of specific historical cases brought readers into his argument at a very basic level. That *Just and Unjust Wars* is now in its third edition and has been for some years a central text used at the United States Military Academy testifies to its importance and its continuing influence.

The publication in 1983 of the United States Catholic bishops' pastoral letter *The Challenge of Peace* provides the third major benchmark in the recovery of just war thinking in American moral discourse about the use of armed force.[10] Unlike the case of Ramsey and Walzer, this document explicitly engaged historical just war tradition, though it did so somewhat spottily, and its overall position was also significantly shaped by nuclear pacifism and by the broader sectarian pacifism associated historically with the monastic movement within Catholicism. Like the historical

[8] Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977). Walzer (1935–), who formerly taught at Princeton University and at Harvard University, is a professor at the Institute for Advanced Study. A prominent and widely cited political philosopher, he has written on a wide variety of topics, including political obligation, nationalism, ethnicity, and economic justice, as well as just war.

[9] Ibid., xiv.

[10] National Conference of Catholic Bishops, *The Challenge of Peace: God's Promise and Our Response* (Washington, DC: United States Catholic Conference, 1983).

just war tradition, *The Challenge of Peace* defined a distinct *jus ad bellum* and *jus in bello,* describing each by a listing of concrete criteria for moral deliberation. But its reading of contemporary war reflected two factors that loomed large in the historical context out of which this document came: concern over the destructive potential of nuclear weapons and, more broadly, of modern warfare as such, as well as an increasingly influential argument that what was beginning to be called "the Catholic peace tradition" defined pacifism as an ideal for all Catholics, not only those in the life of the religious orders. The result was an understanding of just war that significantly diverged from that found in the classical tradition.

The bishops began with what has become a trademark idea for them: that Catholic teaching "establishes a strong presumption against war."[11] On this formulation, the just war criteria exist only to provide the possibility for exceptions, in particular cases, to this general rule. This understanding differs significantly from how the use of force is regarded in the classical just war tradition, where it is morally neutral in itself but may be good or evil depending on circumstances. When used by someone in a position of sovereign authority to protect the common good by restoring or establishing justice with the end of creating peace, armed force was understood as an instrument of positive good; when it was understood as evil, it was because one or more of these necessary factors was lacking. The idea that just war tradition begins with a "presumption against war" first appeared in *The Challenge of Peace.* Where did it come from? Briefly, I regard it as expressing three different influences, two of which I have already mentioned: first, concern over the destructive potential of nuclear weapons and, more generally, of modern warfare as such; second, the growing influence of faith-based pacifism. The first of these tapped into a century-old effort to reject modern war as inherently too destructive to serve any value, a position generically known as "modern-war pacifism," of which nuclear pacifism was a particular expression. The second depended on an idea coming out of the Second Vatican Council (1962–65), that all Catholics should seek to realize in their own lives elements of the spirituality of those in the religious life, including their rejection of participation in war. The drafting committee that produced *The Challenge of Peace* included persons who wanted the entire document to reject war for both these reasons; and as a result, treating the just war criteria as having to do with individual exceptions to a general "presumption against war" was in fact a compromise position between this Catholic and modern-war pacifist position and the inherited doctrine on just war as found in earlier tradition. The third influence that led to this formulation had to do specifically with the language and structure of thought expressing it. This influence was a 1978 article, "Just War Theories," published in the influ-

[11] Ibid., 22 and elsewhere.

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ential Jesuit journal *Theological Studies.*[12] The author of this article, James F. Childress, was an academic ethicist of Quaker background; though published in a Catholic journal, this was in no way an attempt to analyze Catholic thinking on the just war criteria but rather undertook to understand the idea of just war in terms of philosopher W. D. Ross's concept of an ethic of prima facie duties. Childress argued that war is fundamentally morally problematic, as the killing and other harm that takes place in war goes against the prima facie duty of nonmaleficence: "Because it is prima facie wrong to injure or kill others, such acts demand justification."[13] In just war theory, he went on, the function of the various criteria is to provide this justification or, as he also put it, to "overrule" the prima facie obligation. *The Challenge of Peace,* though without reference to Childress's article or to the logic of an ethic of prima facie duties, replicates the structure of this argument exactly: just war theory begins with a presumption against war, and the just war criteria function to override this presumption (or to show that it should not be overridden) in particular cases.

The specific list of *jus ad bellum* criteria provided in *The Challenge of Peace* differs in important ways from the traditional listing. As I have noted, the classical *jus ad bellum* included three requirements: sovereign authority, just cause, and right intention (the end of promoting peace), a formulation already settled by the time of Aquinas. These three requirements correlated directly with the ends of good politics as conceived in Augustinian political theory: order, justice, and peace. It was important for classical just war tradition to put the *jus ad bellum* requirements in this order, because doing so expressed a priority: only one in sovereign authority could justly employ force, and he could do so only in pursuit of justice and for the end of peace. *The Challenge of Peace,* by contrast, lists the *jus ad bellum* criteria as follows: just cause, competent authority, comparative justice, right intention, last resort, probability of success, and proportionality.[14] These last three had been explicitly named also by Childress. While they are arguably prudential concerns that ought to be taken into account in the decisions of statecraft, they never appeared as distinct, formal requirements of the just war idea before this. Their use, both in *The Challenge of Peace* and subsequently, has largely been to reinforce the "presumption against war," that is, to deny the possibility of a just war today. Placing just cause before what the bishops called "competent authority" makes the determination of just cause for the use of force something

[12] James F. Childress, "Just War Theories: The Bases, Interrelations, Priorities, and Functions of Their Criteria," *Theological Studies* 39 (September 1978): 427–45; the citation below is from the version of this paper that appeared as "Just War Criteria," chapter 3 in James F. Childress, *Moral Responsibility in Conflicts: Essays on Nonviolence, War, and Conscience* (Baton Rouge and London: Louisiana State University Press, 1982), 63–94.

[13] Ibid. ("Just War Criteria"), 71.

[14] National Conference of Catholic Bishops, *The Challenge of Peace,* 28–31.

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that takes place prior to the exercise of that authority, suggesting that people other than those in such authority make the call as to whether there is just cause for the use of force. The addition of the category of comparative justice, described as "designed to relativize absolute claims" in a dispute, is also described as "designed to emphasize the presumption against war."[15] Its historical context was arguments in the public sector that placed the American democratic system morally higher than the "evil empire" of Soviet Communism: the requirement of comparative justice denied that such claims provided a justification for resort to armed force.

As for the bishops' treatment of the *jus in bello,* I have already discussed how, in the classical just war tradition, the matter of moral limitation on conduct in war was approached in two ways: by defining specific classes of people normally to be regarded as noncombatants because of personal characteristics or social function, and thus not made the object of direct, intended harm in war; and by setting restrictions on the means of war. As I have also already noted, international law and military tradition have taken shape around the same two approaches. *The Challenge of Peace,* however, adopted the language of Ramsey, defining its *jus in bello* through two principles, which it listed in reverse order from Ramsey's: proportionality and discrimination. The context of the discussion makes clear why the bishops placed proportionality first: "the destructive capability of modern technological warfare" and the expectation that any war, "however initially limited in intention and in the destructive power of weapons employed," would escalate to "the use of weapons of horrendous destructive potential." As a result, the bishops judged, "today it becomes increasingly difficult to make a decision to use any kind of armed force."[16] On this reasoning, then, the bishops' *jus in bello* in effect took on a *jus ad bellum* role: having given up on the possibility that uses of armed force might remain limited once begun, the bishops used their *jus in bello* principles to question the possibility of a just resort to armed force in the first place.

Whereas Ramsey's and Walzer's influence had up to this point been largely limited to relatively narrow religious, intellectual, and policy circles, *The Challenge of Peace* had a far broader impact. The drafting committee held public hearings and heard testimony from a wide variety of types of people, including representatives of the Reagan administration. The second draft of the pastoral letter made the front pages of both the *Washington Post* and the *New York Times,* where its text was printed in its entirety. Numerous colleges and universities held conferences and hosted talks relating to the developing pastoral letter and the larger topic it dealt with. The U.S. Army's annual conference of its major command chaplains—

[15] Ibid., 29.
[16] Ibid., 31.

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the colonel-level chaplains assigned to the Army's various major command regions throughout the world—included a focus on this developing statement and what its implications might be for a military whose membership was very heavily Catholic. After the final version of *The Challenge of Peace* was adopted, the United States Military Academy included presentations and a discussion of the letter in its annual Senior Conference, whose audience is senior military and civilian defense officials. *The Challenge of Peace* has also had a longer-term effect in that its way of presenting the idea of just war has been adopted by others, both Catholic and non-Catholic, as what this idea means.

In any case, by the time *The Challenge of Peace* was published, the recovery of the idea of just war as a focus and resource for moral reflection and debate on the use of armed force was an accomplished fact. The just war idea is now part of the curriculum at all the United States service academies and at the war colleges; in the civilian academic world, it not only has entered the curriculum in such diverse fields as philosophy, political science, and religion but has continued to be treated in academic conferences and in campus lectures; and it has been an element in public debate over the use of armed force in every conflict since the 1980s.

My own place in this recovery of the just war idea has been dual: to seek to identify and recover the historical tradition in its setting and fundamental purpose, and to apply an understanding of just war based in knowledge of that tradition to contemporary issues. These dual aims have produced two different kinds of books: three historical studies, *Ideology, Reason, and the Limitation of War,*[17] *Just War Tradition and the Restraint of War,*[18] and *The Quest for Peace: Three Moral Traditions in Western Cultural History;*[19] and two books of moral analysis and argument focused on contemporary issues in armed force and its use, *Can Modern War Be Just?*[20] and *Morality and Contemporary Warfare.*[21] Over the last decade or so, I have also engaged in comparative historical and thematic study of the tradition of *jihad* in Islamic religion and culture, expressed in two jointly edited books, *Cross, Crescent, and Sword*[22] and *Just War and Jihad,*[23]

[17] James Turner Johnson, *Ideology, Reason, and the Limitation of War: Religious and Secular Concepts, 1200–1740* (Princeton, NJ, and London: Princeton University Press, 1975).

[18] James Turner Johnson, *Just War Tradition and the Restraint of War: A Moral and Historical Inquiry* (Princeton, NJ, and Guildford, Surrey: Princeton University Press, 1981).

[19] James Turner Johnson, *The Quest for Peace: Three Moral Traditions in Western Cultural History* (Princeton, NJ, and Guildford, Surrey: Princeton University Press, 1987).

[20] James Turner Johnson, *Can Modern War Be Just?* (New Haven, CT, and London: Yale University Press, 1984).

[21] James Turner Johnson, *Morality and Contemporary Warfare* (New Haven, CT, and London: Yale University Press, 1999).

[22] James Turner Johnson and John Kelsay, eds., *Cross, Crescent, and Sword: The Justification and Limitation of War in Western and Islamic Tradition* (New York, Westport, CT, and London: Greenwood Press, 1990).

[23] John Kelsay and James Turner Johnson, eds., *Just War and Jihad: Historical and Theoretical Perspectives on War and Peace in Western and Islamic Traditions* (New York, Westport, CT, and London: Greenwood Press, 1991).

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and in my own *The Holy War Idea in Western and Islamic Traditions.*[24] I understand just war tradition as expressing fundamental values in Western culture, expressed in different ways in different cultural and historical contexts. Just war is not a theory but a tradition, in which a variety of theories can be found; it is not simply a product of religion or theological reflection but a way of thinking about statecraft and the use of force within the context of statecraft that has implications for law, international order, military affairs, and other aspects of individual and common life. One of my goals has been to restore, at least in part, the dialogue across now-distinct disciplines and social sectors that shaped just war tradition in its classical form. More substantively, however, I am convinced that it is necessary to attend to both the form and the content of the classical just war tradition and to the underlying values it expresses. I agree with the classical just war tradition, as well as with Ramsey and Walzer, that the use of power, including the use of armed force, is a necessary element in the good exercise of statecraft. I also agree with these contemporary theorists that it remains possible to make moral distinctions today, as ever in the past, about when it is justified to have recourse to armed force, that it is possible to formulate policies and make decisions based on those judgments, and that it is possible to act in morally informed and discriminating ways to carry out those policies and decisions. In short, I believe the absolute pacifists are utterly wrong about the shape of human communal life in history, and I believe the modern-war and nuclear pacifists are fundamentally mistaken in arguing that the advance of weapons technology (and also, perhaps, the nature of the contemporary state) makes war immoral as such. This conditions both my contribution to recent debates on matters having to do with armed force and its use and my reaction to the arguments put forward by some others in these debates, including certain theorists who profess to lay out what the idea of just war requires. Let me now turn to some specific ideas that have been prominent in recent just war discourse, examining them from my own perspective tutored by the just war tradition in its classical form.

II. Important Themes in Current Just War Discourse

A. Is there a presumption against war or against the use of military force?

That there is such a presumption is, as we have seen, the position taken by the U.S. Catholic bishops in *The Challenge of Peace.* There it was framed as a "presumption against war" to be found in Catholic teaching but held to be universally binding. In the bishops' 1993 statement *The Harvest of Justice Is Sown in Peace,* the phrasing was slightly different: "The just-war

[24] James Turner Johnson, *The Holy War Idea in Western and Islamic Traditions* (University Park: Pennsylvania State University Press, 1997).

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tradition begins with a strong presumption against the use of force."[25] A third phrasing appeared in the bishops' November 2003 "Statement on Iraq": "the strong presumption against the use of military force."[26] These changes, I think, were adopted to fit better the context of uses of military force short of formal war between states, and I do not read in them any important change in meaning. The critical question, however, is whether such a presumption actually is to be found in the tradition. My answer is no. I have argued this in other connections, including my 1999 book *Morality and Contemporary Warfare.*[27] Briefly stated, my argument against the claim that just war tradition begins with a "presumption against war" is that such a presumption is nowhere to be found in the classical tradition as it took shape in the Middle Ages and developed through much of the modern period. What one finds there is a "presumption against injustice," as in the standard medieval formulation that a resort to force is just if it seeks to repel an injury, to restore something wrongly taken, or to punish evil. Augustine's emphasis, as Ramsey saw clearly, was to defend the neighbor against unjust attack; the emphasis of Aquinas and scholastic just war thinking after him was, as the French scholar Alfred Vanderpol put it, "vindicative justice," that is, an action to reestablish justice by vindicating those who had received injustice.[28] Similarly, in the transition to the modern period, the increasing emphasis on self-defense followed from the concern that force should be used to maintain or reestablish justice in international relations. On my reading, the beginnings of the idea of a "presumption against war" are to be found in moral outrage against the destructiveness of modern war, specifically as read through the examples of the Franco-Prussian War and World Wars I and II. The idea's near relation is modern-war pacifism and its particular expression, nuclear pacifism.

Now, who is right about the place of this "presumption against war" in relation to just war thinking? Fr. Bryan Hehir, who was the principal drafter of the 1983 pastoral letter of the U.S. bishops, writes in a review of my *Morality and Contemporary Warfare:*

> Johnson has often stated his view that such a construct [that of the presumption against war] is detrimental to the use of just war tradition and cannot be found in the classical authors. I think all would concede the last point and contest the first. . . . [T]he substantive reason for placing a presumptive restraint on war as an instrument of politics is, in my view, entirely necessary. Both the instruments of

[25] National Conference of Catholic Bishops, *The Harvest of Justice Is Sown in Peace* (Washington, DC: United States Catholic Conference, 1993), 454.

[26] United States Conference of Catholic Bishops, "Statement on Iraq," available online at: http://www.usccb.org/bishops/iraq/htm (accessed February 9, 2004).

[27] See note 21 above.

[28] Alfred Vanderpol, *La doctrine scholastique du droit de guerre* (Paris: A. Pedone, 1919), 250.

> modern war and the devastation of civilian society which has accompanied most contemporary conflicts provide good reasons to pause (analytically) before legitimating force as an instrument of justice.[29]

I am happy that Hehir has conceded my point about the primacy of justice, and the absence of a presumption against war, in the authors who classically defined the idea of just war and thus gave a coherent shape to the tradition. For them it was not force as such that was wrong; for force, they believed, could be an instrument of good as well as of evil, depending on how it was used. Hehir's challenge is now directed to this last point, the idea that force can be anything other than an instrument of evil, and his argument is that "the instruments of modern war and the devastation . . . which has accompanied most contemporary conflicts" provide the reasons for maintaining a presumption against war. That is, war today is inherently too horrible to be a neutral instrument of good or evil. I note that this is the modern-war pacifist argument in a nutshell. It is, however, problematic in several fundamental ways. First, it tars all uses of force with one brush. I do not see the equivalence between the devastation caused by Iraq's 1990 invasion of Kuwait—including its destruction of much of Kuwait City and its intentional setting on fire of Kuwait's oil fields when its forces were forced out—and the destruction caused by the allied forces against Iraq in response to this aggression, up to and including the air strikes against structures in Baghdad and dual-use targets such as communications nodes and the power grid. Nor do I see the equivalence between the ethnic cleansing of Bosnia (and more recently, Kosovo) and the air strikes used with the aim of bringing such warfare against noncombatants to an end. Moreover, the doctrine, training, technology, and actual employment of force by the United States military in both Afghanistan in 2002 and Iraq in 2003 provide a strong indication that the weapons of contemporary warfare are not all inherently grossly destructive, as Hehir wrongly assumes, and that they do not lead necessarily to "the devastation of civilian society." His description of "the instruments of modern war and the devastation . . . which has accompanied most contemporary conflicts" fits the model of World War II very well, and it also reflects the concerns about the level of destruction that would arise from superpower nuclear war, the focus of the 1983 pastoral letter. However, it has little to do with the actual face of contemporary war, whether the low-technology warfare of Somalia or Rwanda (or of contemporary terrorism) or the high-technology warfare the United States military now practices. Nor does Hehir's argument make any distinction as to how, by whom, and to what ends armed force is used. Contrary to Hehir's argument and the idea of the "presumption against war," for just war tradition as a whole the mere existence of military power does not itself stand as an

[29] J. Bryan Hehir, "In Defense of Justice," *Commonweal* 127, no. 5 (March 10, 2000): 32–33.

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evil, for it remains within the compass of moral decision whether and how to use the power available. That is where the focus of just war thinking traditionally has been, and in my view it is where it should properly remain.

I confess to some puzzlement as to what the "presumption against war" means in practical terms when, as in much recent religiously based language, it stands alongside a vigorous argument in favor of armed intervention in defense of human rights when these are being egregiously violated. To take an example, the U.S. Catholic bishops' 1993 statement *The Harvest of Justice Is Sown in Peace* includes a citation from Pope John Paul II that "humanitarian intervention [is] obligatory where the survival of populations and entire ethnic groups is seriously compromised" and follows it with the judgment that "military intervention may . . . be justified to ensure that starving children can be fed or that whole populations will not be slaughtered."[30] If intervention in such circumstances is an "obligation," and if the obligation may include military means when they are all that will suffice, then where is the presumption against such means? Further, what does it add to the moral analysis to include such a presumption, when the analysis itself already takes account of concerns of last resort, reasonable hope of success, and the requirement that the means used not cause more harm than good? May not, in some circumstances, a preference for a nonmilitary response to egregious violations of human rights lead to a worse disaster than the quick use of military force? (I think of the case of Rwanda in 1994. Many who observed the beginnings of that massacre, including the Canadian general commanding the United Nations peacekeeping force, believed that a limited use of professionally trained and equipped military force early on against the marauding Hutu gangs could have prevented the genocidal killing of Tutsis that ensued.)

B. What constitutes "last resort" in the use of military force?

Disagreement over the meaning of the just war criterion of "last resort" is closely related to the idea of the "presumption against war." Let me take as an example the debate during 1990–91 on whether to use force against Iraq to expel it from Kuwait and punish its aggression. At that time, much religious opinion, Catholic and mainline Protestant alike, opposed the use of force against Iraq for a variety of reasons, arguing instead for other measures, including economic and diplomatic sanctions, to compel Iraq to withdraw and to set things right. Use of military force against Iraq, it was argued, should not be undertaken until it was clear that all these other measures, including economic and diplomatic sanctions, had had time to work. Opposition to the use of force, accordingly,

[30] National Conference of Catholic Bishops, *The Harvest of Justice Is Sown in Peace,* 15.

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was put (in part) in terms of the just war requirement that resort to force be a *last* resort, understood by those opposing the use of force to require that all other measures conceivably available be used and found to fail first. A decade later, by contrast, one no longer heard about how the sanctions should have been given time to work; rather, moral concerns were being loudly voiced over the effects of the existing sanctions on the civilian population of Iraq. If this was a problem a decade later, it was surely a problem in 1991.

In the debate of 2002–03 over whether to use armed force to remove the Saddam Hussein regime, the U.S. Catholic bishops did not appeal to the "last resort" criterion in their formal statement arguing against the use of such force. Others, however, did so, interpreting this criterion as meaning that every other alternative should first have been tried and proven ineffective. A prominent example of such reasoning was that of former president Jimmy Carter in a *New York Times* op-ed piece that appeared on March 9, 2003.[31] Carter here explicitly appealed to the idea of just war, placing the criterion of last resort first among the just war principles as he listed them (last resort, discrimination, violence "proportional to the injury we have suffered," legitimate authority, and establishing a peace that is "a clear improvement over what exists"). Last resort, he argued, means that "all nonviolent options [must be] exhausted."

But the just war criterion of last resort does not mean that everything except military force must first be tried and have failed. Rather, this criterion, like the resort to force itself, has to be interpreted via a judgment as to the proportionality of proposed nonmilitary means—whether they will cause more good than harm—and as to whether they have any reasonable hope of success. That is, last resort is a criterion to be used in analyzing whether force is the most reasonable and proportionate choice, among all the choices available, to bring about the justified end. It is wrong to use the criterion of last resort as a means of postponing indefinitely *any* resort to military force.

C. What should we say about sovereign authority today?

At the beginning of his question "On War" (*Summa Theologica* II-II, q. 40, a. 1), Thomas Aquinas (1225–74) lays down that for a war to be just, three things are necessary: sovereign authority, just cause, and a right intention, which for him included both the aim of peace and avoidance of wrong intention, such as the desire to dominate, "implacable animosity," or lust for personal gain or power. (He drew all of these requisites from Augustine, whom he cited in explaining them. They had been introduced into the canon law tradition in the twelfth century via Gratian, who also drew them from Augustine.) It is very interesting and important that

[31] Jimmy Carter, "Just War—or a Just War?" *New York Times,* March 9, 2003, section 4, 13.

Aquinas began by requiring sovereign authority, and it is especially notable since nearly all present-day accounts of the *jus ad bellum* begin with the requirement of just cause. There are two fundamental reasons why Aquinas began here. First, for him as for Augustine and Gratian before him (and the whole thrust of classical just war tradition after him), only the person in sovereign authority, and not any private person, has the right to resort to force. Thus, the sovereign has the ultimate responsibility to weigh whether a just cause exists and decide whether to use force to correct any violation of justice that may appear. Second, the sovereign is responsible for the common weal—immediately, the good of the society over which he is sovereign, and less immediately, the good of the larger order of societies. (Aquinas developed more fully the sovereign's responsibilities in his treatise *On Princely Government,* and to understand more broadly what sovereignty was understood to entail in medieval and early modern thought, one should consult the body of literature on the good ruler right down through Erasmus.) So authority to resort to armed force, for Aquinas, had to be sovereign authority, because of the sovereign's particular responsibility for the common weal of his society and the order of nations as a whole. This is what lay behind Aquinas's use in this connection of Romans 13:4, a biblical passage much cited in medieval just war discourse: "For rulers are not a terror to good conduct, but to bad. . . . [The ruler] does not bear the sword in vain; he is the servant of God to execute his wrath on the wrongdoer." What might this imply today?

The first thing to ask is where "sovereign authority" to use force, one of the principal requirements of the just war tradition, lies today. There are three contenders: the United Nations, and in particular the Security Council; regional security alliances; and individual states. In positive international law, individual states, and by extension alliances of states, have the right and authority to resort to force in defense against an armed attack, whether credibly threatened or in progress. Most armed interventions historically have fitted under this rule; this was the international-law justification for the armed response to Iraq after its takeover of Kuwait. Beyond uses of armed force in defense, the United Nations Charter gives the Security Council the responsibility to authorize such force to deal with threats to international peace and security. This allows for Security Council–authorized military actions, including armed interventions, when the Council has determined that a threat to international peace and security exists.[32]

[32] Though my discussion here is not directed to the problem of nonstate actors who use armed force, there is no doubt that over most of the historical development of just war tradition, the requirement of sovereign authority was understood to forbid anyone not in a position of sovereign responsibility from having resort to armed force. An example encapsulating this attitude is Martin Luther's position on the German peasants' rebellion of 1525. Though he sympathized with the peasants' grievances, he admonished them to seek peaceful redress. When they instead took up arms, he called on the German princes to put down

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Positive international law derives from the Westphalian system of international order, in which the bedrock assumption is the right of territorial sovereignty. On this assumption the ruling authorities of any state were long held to have the right to do whatever they might wish in dealing with their own population, whatever its shape or consequences. It was only in the wake of World War II and the Holocaust that this conception began to be modified and limited by the growth of a new body of positive international law defining human rights and establishing protections based on them. This new level of recognition and protection of human rights provides much of the impetus for humanitarian intervention in the contemporary context. What is not settled either in positive or in customary international law is exactly what authorities have the right to undertake armed interventions for protection of human rights. Is this to be understood by extension of the right of individual states and alliances of states to use force in defense of themselves or of others who ask for help? Or is it to be understood by extension of the Security Council's right to authorize force in cases of threats to international peace and security? Recent history provides examples of all three sorts of actors and both kinds of rationales for humanitarian interventions.

In traditional just war terms, the state is inherently most capable of meeting the moral requirements of the idea of sovereign authority. The United Nations lacks several important attributes of such authority: it is not in fact sovereign, taking its power from the agreement of its constituent states; it is not responsible or accountable to the people of the world, but only to these states; and it lacks command and control mechanisms, so that it cannot direct the use of force responsibly. Regional security alliances such as NATO have a level of authority, in just war terms, somewhere between that of sovereign states and the United Nations. Concern to maintain the moral meaning of authority to use force leads me to caution internationalists that there remains an important place for individual action by properly governed and rightly motivated states. I am dubious of efforts to restrict the authorization of humanitarian interventions or other uses of force to the United Nations alone. Besides the problems with understanding the United Nations as possessing sover-

their rebellion by force, calling it a duty to do so. See Robert C. Schultz, ed., *Luther's Works,* vol. 46 (Philadelphia: Fortress Press, 1967), 3–56. As for contemporary just war thinkers, Ramsey treated the issue only in the context of a discussion of intervention, parrying the Communist claim that "national liberation" movements have a right to use armed force by responding that in fact such movements are proxy wars supported from abroad, not indigenous rebellions. See Ramsey, *The Just War,* 23–24. Walzer, at various places in *Just and Unjust Wars* (see chapters 6, 11, and 18), seems to require that movements which take arms in rebellion against the established authorities must have the purpose of serving the general good of their people. Such was explicitly the position taken by Richard John Neuhaus in Peter L. Berger and Richard John Neuhaus, *Movement and Revolution* (Garden City, NY: Doubleday and Company, 1970); Neuhaus in fact laid down the more stringent requirement that a revolutionary resort to arms is justified only if it meets all the just war requirements. This is my own position as well.

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eign authority in the just war sense, it is a sad fact that the United Nations (and in particular the Security Council, which according to the Charter is the body that may authorize the use of armed force in response to threats to international peace) is often prevented from taking action by internal politics. Recent examples include the cases of Rwanda and Kosovo, not to mention Iraq in 2002–03. As for uses of armed force by regional alliances, such as the NATO intervention over the conflict in Kosovo (undertaken in the absence of a Security Council mandate, though the Council's approval was given after the action), I think we should regard these essentially as the consensual joining together of individual states in support of a purpose widely recognized in international humanitarian law. Indeed, such consensus is important as a check on the motivation of any such intervention; on this I agree with Bryan Hehir and others.[33] The more robust the consensus the better; yet I would insist that the just war understanding of authority means that individual states may also act alone in cases of pressing need.

The moral understanding of the concept of sovereign authority is also what gives states, groups of states, and the Security Council the right to override territorially defined sovereignty when the latter is being abused. When do the rights and protections of sovereignty disappear, on this moral analysis? Under either of two conditions: first, when the governing authorities violate the basic human rights of some or all of their people (since the sovereign's authority to rule follows from service to the common weal, sovereignty is lost, in the moral sense, when state power is used to oppress some or all of the people who live under its rule); and second, in the case of rogue states, states that employ their power to menace others (this, I take it, is the moral meaning of the international-law concept of threats to international peace and security). On this understanding, humanitarian intervention and other uses of force against a state or government that has engaged in massive human rights abuses or that threatens other states or the international order as a whole do not violate the sovereign rights of the state or government that is the object of the intervention, because it has already forfeited those rights by its wrongdoing.

Thus far, I have been discussing issues in the current debate that have to do with the justified resort to force: that is, issues relating to the question of the *jus ad bellum.* Now let me turn briefly to the current state of thinking related to the question of *jus in bello,* right conduct in employing justified force.

D. The question of discrimination

First, what is the current thinking about what discrimination requires? The baseline of most recent just war thought on this subject has been the

[33] J. Bryan Hehir, "Intervention: From Theories to Cases," *Ethics and International Affairs* 9 (1995), 1–13.

formulation of Paul Ramsey: discrimination requires that there be no direct, intentional attacks upon noncombatants, though the rule of double effect allows indirect, unintentional collateral harm to noncombatants from attacks against combatant targets. Michael Walzer, in *Just and Unjust Wars,* added a further qualification to the meaning of the double effect rule: that the attacker, "aware of the evil [collateral harm], . . . seeks to minimize it, accepting costs to himself."[34] With this background, there are two fundamental questions having to do with what discrimination requires in the current debate. The first is a perennial one: Exactly what is the distinction between a combatant and a noncombatant in contemporary armed conflicts? The second comes from the difference between Ramsey's and Walzer's interpretations of what double effect requires.

As to the first of these questions, recent debate has reintroduced the idea that in contemporary war the combatant-noncombatant distinction collapses. I have never found this argument convincing, and I do not think we need to go beyond Ramsey's and Walzer's response to it: that the argument is overblown, and that there are in every conflict some people who would be noncombatants by any reasonable reckoning. There is good historical reason to hold that the problem with modern warfare is not that the combatant-noncombatant distinction blurs or disappears, but that such warfare has often involved the conscious decision to target noncombatants. An example from World War I is provided by the German Navy's deliberate choice to bombard undefended English channel towns in violation of Hague Convention IX of 1907.[35] Between the two World Wars, the theory of strategic bombardment developed as an explicit rationale for attacking noncombatants as a way of undermining the enemy's civilian morale and hurting its ability to wage war. During the Cold War, though the rule of double effect was often invoked (beginning with Ramsey) as a way by which at least some use of nuclear weapons might be morally justified, the fact remains that the destructiveness of an actual nuclear attack would cause extraordinarily high levels of harm to noncombatants—whether they were directly, intentionally targeted or not.

It helps the cause of the combatant-noncombatant distinction that one of the most evil features of many contemporary armed conflicts, as of contemporary terrorism, is that this distinction has in fact been turned on its head, so that it is not just ignored, but noncombatants have been preferentially targeted as a way of prosecuting war. (Think of the Rwanda genocide, the ethnic cleansing in former Yugoslavia, the terrorism in Northern Ireland, Israel, and Sri Lanka, the amputations of limbs of noncombatants in the conflict in Sierra Leone, the deliberate targeting of the World Trade Center towers in the 9/11 attacks, the deliberate endanger-

[34] Walzer, *Just and Unjust Wars,* 155.

[35] For a description of this decision and its context, see Robert K. Massie, *Castles of Steel: Britain, Germany, and the Winning of the Great War at Sea* (New York: Random House, 2003), 319–27.

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ing of noncombatants as a tactic used by the Fedayeen Saddam in Iraq in 2003, and the similar targeting of civilians by the Iraqi insurgents today.) But it does not help the idea of this distinction that the air war against Serbia over Kosovo trended in its final days toward something increasingly like strategic bombing, which by definition is bombing aimed at the civilian noncombatant society of the enemy, not at his armed forces or his government. The drift toward justifying such targeting is insidious when it occurs, and it needs to be headed off by planners and target selectors before it develops. At the same time, I think it needs to be said clearly that from the perspective of just war tradition (and, indeed, from both Ramsey and Walzer) there is a real moral difference between (1) hitting a legitimate target with collateral noncombatant harm and (2) directly, intentionally hitting the noncombatants. The mere fact that noncombatants suffer from a bombardment, for example, does not mean that the bombardment was unjust, though it may become unjust if disproportionate. Appreciation for this distinction was not always present in the moral debate over nuclear weapons, and it is not always present now.

The second question, though, is how far the attacker must go, morally speaking, in seeking to avoid collateral harm to noncombatants. What degree of risk or cost should the attacker shoulder? Walzer's argument, or something like it, seems to me to lie behind the moral disquiet some critics expressed over the way the Kosovo intervention was carried out: by planes flying high above the range of Serb air defenses, so that the pilots bore essentially no risk. A similar argument might be made regarding the air war over Afghanistan in 2002 or Iraq in 2003, where in both cases the defense against such attack was minimal. What can one say about this argument? I am sympathetic with the thrust of Walzer's argument, but I think it is wrongly used when it is applied in such cases as these. There is no moral responsibility to take risks and incur costs to oneself when it makes no difference in the outcome, or when the difference made would be negative. Whether a contemporary precision-guided missile (PGM) hits the intended target is not affected by how high the pilot is flying, so long as he remains within the required range. Indeed, for some PGMs (for example, JDAM-equipped bombs) it is necessary for the pilot to fly high so that the aiming device has time to acquire the necessary satellite signal. A further, and different, kind of consideration is that bombing with PGMs may be more accurate when there is no threat from air defense, since such damage-limiting factors as time of day, angle of attack, and choice of weapons-delivery platform then become more important. Indeed, in some cases, higher collateral damage may result from a low-flying plane than from a high-flying one. Walzer makes an important moral point, but it must be applied intelligently, taking into account the realities of the kind of warfare in question. The important moral questions, in any case, are the selection of the target and the means used to attack it.

The principle of discrimination imposes a moral requirement to develop and employ weapons capable of close accuracy and thus able to be less destructive in their effect. Contemporary precision-guided munitions are thus a morally important development, since they are inherently more capable of being used discriminately (and their lower yields make them more proportionate in their effects as well). Some critics have charged that the nature of these weapons—their ability to discriminately hit a given target and cause little or no damage beyond it—may lead to their being used more frequently, perhaps capriciously. Certainly in the recent context, where there have been many pressures for humanitarian intervention and for action against rogue states, the availability of cruise missiles, laser-guided bombs, and other precision-guided munitions may suggest a relatively cost-free line of action that circumvents the moral consideration that should be undertaken before any use of force. If this is the case, then the problem is a possible misuse of the *jus ad bellum* decision, not of the *jus in bello* discriminateness and proportionality of these weapons themselves.

The weapons themselves, of course, are only part of the story: also needed is the will to use them discriminately and the embodiment of this will in the training given to those who use them, the development of strategies and tactics for their use focused on avoiding harm to noncombatants, and the monitoring of targeting decisions by a team including experts in the application of the requirements of the law and morality regarding noncombatant immunity. In all these respects, the United States military is currently far out front in development of the capacity to fight so as to minimize harm to noncombatants. The role of the moralist in regard to the conduct of war should be to hold that conduct to the standards that these capabilities have made possible.

E. What constitutes disproportionate force?

I have already referred, in the *jus ad bellum* discussion above, to the argument of modern-war pacifists, also called just-war pacifists, that modern war is inherently disproportionate in the destruction it causes. I have never found this argument convincing. One problem is: disproportionate to what? It is clear that modern warfare as exemplified by the two World Wars was very destructive; but that modern warfare is inherently so remains to be proven. In any case, the only way to measure moral proportionality in the use of force is to compare the destruction caused with the good produced (which also includes the evil averted). In the *jus in bello* sense, some just war thinkers have in the past interpreted the requirement of proportionality as meaning opposing force with similar force and no more. This seems to have been one reason for moral criticism of the massive force deployed against the Iraqis in Operation Desert Storm and, in the Kosovo intervention, criticism of the air campaign. But opposing

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force with similar force can lead to more destruction, not less, as each force is bloodied similarly by the other, additional forces are drawn in on both sides, and the conflict drags on and escalates. There is a proportionality argument for the use of overwhelming force, though this is seldom admitted by persons who regard force itself as the central problem. Again, the proper measure of proportionality in just war terms is harm done against good done; calculation of whether a given amount of force is proportionate or disproportionate follows from that.

But this calculation of proportionality also requires us to ask whether a particular means is the best way to a desired end. The air campaign against Serbia did nothing directly to protect the ethnic Albanian Kosovars, and it may, as some have argued, have triggered worse violence against them by the Serb troops and paramilitaries in Kosovo. Admittedly, the air strikes were expected to cause the Serb forces to cease their violence against the Kosovars, and it was bad calculation that this did not happen. It is also the case that ground-force options were very limited. Yet this discrepancy between ends sought and means employed is the sort of thing one should look at when thinking in terms of the just war requirement of proportionality during an armed conflict, rather than the matter of how much destruction, in raw terms, has been created.

The particular problem of attacks against dual-use targets (those which have both civilian and military uses) raises questions of both discrimination and proportionality. Discrimination does not mean that such targets cannot be morally attacked; rather, the rule of double effect implies just the opposite. Nevertheless, considerations of proportionality may limit such targeting or argue against it entirely. Dual-use targets include power grids, communications nodes, critical highways, railroads, bridges, and the like. These can be legitimate military targets in terms of the criterion of discrimination as defined via the rule of double effect. But military forces typically have a range of backups for all these that noncombatant society lacks. Thus, the collateral damage to noncombatants from an attack on a dual-use target may be disproportionately greater than the damage to the combatants. Again, proportionality requires measuring the damage caused against the justified end. Attacks on dual-use targets may sometimes satisfy this calculation, but sometimes they may not. The decision to attack such targets is thus not just a matter of whether discrimination is satisfied; proportionality must be satisfied as well. For whatever reason, the decision was made in Operation Iraqi Freedom, before the use of armed force began, not to target dual-use facilities. I regard this decision as morally very significant. This was a general rule that might be (and was) overruled in specific, limited instances, when the military value of a facility was judged to be sufficient to warrant its destruction. This illustrates the right way, in my judgment, to approach the targeting of dual-use facilities: saying no to such targeting in general, but with the possibility of overriding this general rule if considerations of military value warrant

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it and if the requirements of discrimination and proportionality can be satisfied.

F. What about the end of peace?

I find it deeply ironic that the U.S. Catholic bishops' 1983 pastoral *The Challenge of Peace* did not include the end of peace in its listing of the just war criteria. It is the more tragic that most recent just war debate has paid little attention to this, and that, as events have shown, planning for Operation Iraqi Freedom included disproportionately little on the peaceful rebuilding of Iraqi society, compared to the attention given to the military campaign itself. Nor did the U.S. Catholic bishops address this issue in their "Statement on Iraq"—a fact not excused by the context of their being opposed to the use of force in the first place.

Surely the just war tradition regards the purpose of achieving a genuine peace as a necessary element in the decision on whether the resort to force is justified or not. But having such a purpose implies having the will to achieve it and taking the necessary steps, including planning and commitment of resources, to achieve it. Moreover, the just war tradition includes significant resources for helping to understand what such peace means in fact. In the first place, this peace is the result of creating a justly constituted social and political order. Second, the responsibility of establishing such an order and providing for its continuation and protection is among the obligations of sovereign authority—the same sovereign authority that must make the decision to use force in the first place. The rightness or wrongness of the decision to use force is not simply about the use of force itself, so long as it lasts, but a commitment to the purpose of peace at which the use of force should aim. It is an immoral choice simply to declare military victory and depart.

I suggest that we have, in practical terms, learned a great deal about what is needed for the actual establishment of the conditions for social and political peace in societies ravaged by war (and by previous egregious abuses of human rights) through the experiences of Bosnia and Kosovo. These show both how difficult it is, and how long it is likely to take, to create the conditions for genuine peace. Fundamental institutions have to be rebuilt, often from scratch; the infrastructure of civilian life needs to be repaired or rebuilt; and not least the people who have good reason to mistrust one another must be brought to learn how to live cooperatively with one another. It may well be that doing all this is beyond the physical resources of any single nation—even one as wealthy and powerful as the United States—and the cases of Bosnia and Kosovo argue that, in any case, there is much to be said for a genuinely international participation in the effort to rebuild. Diversity in participation in such an effort may lead to a certain level of inefficiency and even chaos, but it also provides a richness that goes beyond

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what any one nation may be able to provide. Moreover, the cooperation of diverse nations around the achievement of common goals, motivated by common values, provides a powerful model for societies whose populations have been divided by war. Such cooperation also reduces the likelihood that efforts to establish a just social and political order—and therefore a society at peace within itself and with others—will be regarded as "victor's justice."

What is notably lacking in recent just war debate is a serious commitment to explore what the end of peace may require, both negatively—that is, in terms of the effort to oppose a regime that systematically violates the core meaning of peace, a just social and political order for its people—and positively—that is, in terms of the commitment implied by the decision to use force to correct the first kind of evil.

Let me conclude this discussion of the end of peace with a few remarks on a special topic, that of war crimes. The commission of war crimes is directly a war-conduct (or *jus in bello*) issue; but the question of war crimes investigations, prosecutions, and punishment has to do with the end of peace, one of the premier *jus ad bellum* concerns. For a society to punish its own citizens who are guilty of war crimes is an important ideal, an indication of that society's commitment to a just order. Yet in cases in which such national action is unlikely or impossible, international judicial processes offer an alternative. Almost forty years passed between the Nuremberg and Tokyo trials and the present, ongoing war crimes tribunals for Rwanda and former Yugoslavia, but a standing international war crimes court (the International Criminal Court) now exists and the question of war crimes is much in discussion in various contexts today. It has taken a while for this discussion to develop, and it is still developing. For a time, many in the conflict-resolution debate looked approvingly on the Chilean solution for dealing with atrocities during conflict: "lustration," or identification of the atrocities and perhaps the perpetrators, but the extension of amnesty toward them. The South African Truth and Reconciliation Commission leaned heavily on this model, but the commission's work was paralleled by more traditional legal investigations, prosecutions, and punishment of those who did not participate in the lustration process and receive amnesty. The atrocities of Rwanda and the former Yugoslavia were so severe and widespread that the international community united around the creation of war crimes tribunals to deal with the perpetrators. This may have implicitly dealt a death blow to the idea of lustration, as the effort to bring former Chilean head of state Augusto Pinochet to trial suggests. One argument against war crimes prosecutions, favored by some in the diplomatic and conflict-resolution communities, was that the most important thing in armed conflicts is to achieve a cease-fire, and the threat of war crimes prosecutions tended to prevent this. Think, for example, of the very different treatment given to Yugoslav head of state Slobodan Milosevic at the time of the Dayton

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Accords[36] and now, in the wake of the Kosovo atrocities. My own judgment is, as I have suggested before, that the aim of a just war is not simply to end the fighting, for peace without justice is no real peace at all. Rather, just war tradition requires a peace with justice, a peace in which the rule of law is established or restored, one in which civil society does not need to cope with the ongoing fear of powerful figures who perpetrated evil acts during the conflict and remain free to engage in similar acts again. The end of peace, thoroughly understood, requires a commitment to achieving such a society, so that the moral work is not done when the decision to resort to force is taken, or when the force is itself being used, but only when a real peace is established in the end. Exactly what this implies, together with how to provide the resources necessary for it, needs to become a much more central part of moral debate on the justified use of armed force.

III. Conclusion

Exactly what to make of the just war idea in the contemporary context has been the subject of this essay. While there has been a robust growth and establishment of just war thinking in American moral discourse on the use of armed force over the last four decades, this has sprung from somewhat different conceptions of just war (as illustrated by the three benchmarks I discussed in Section I), has either not engaged the deeper historical just war tradition at all or has done so only spottily, and in some cases has introduced new moral assumptions and criteria which, both in principle and in practice, have reshaped the thrust of just war argument in a way that is at odds with its historical purpose. At the same time, new concerns, such as the meaning of the requirement of sovereign authority in the era of the United Nations and the problem of how to understand the requirement of discrimination in contemporary warfare, have opened the door to a variety of arguments and a corresponding diversity of conclusions.

It is certainly clear that if it is to be a meaningful source for moral wisdom regarding the use of armed force in any historical context, the just war idea must be relevant to that context. The internal development of the just war tradition is in fact a story of its interpretation and adaptation to changing contexts over history, and the contemporary use of just war reasoning should correspondingly be expected to engage the world as it is. But this does not mean attempting to invent the idea of just war anew, treating its categories as shells without content to be filled with contemporary meanings, or modifying it in ways that are at odds with its

[36] The Dayton Peace Accords, initialed at Wright-Patterson Air Force Base, Dayton, Ohio, on November 21, 1995, and signed in Paris on December 14, 1995, established the framework for peace in Bosnia-Herzegovina, ending its war for independence.

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historical content and intention. Accordingly I have argued that contemporary just war discourse needs to be tested and disciplined by reference to historical just war tradition, especially by reference to the normative content and purpose of that tradition in its classical form as reached by the end of the Middle Ages and the beginning of the modern period. In the previous section of this essay, I have shown how I think such testing ought to be done, using the classical form of just war tradition as a critical tool for dealing with several prominent themes in recent just war discourse. It is simply not the case, I think, that "the making of the moral world" can be divorced from "its present character," as Michael Walzer suggests in *Just and Unjust Wars;*[37] rather, the moral world as it was made in the past continues to be with us in the present, and responsible moral discourse must have a significant dialogue with that past and the processes which made it. A recovered conception of just war thus holds promise on several fronts. Not only does it provide a way of thinking morally about the resort to force, and right conduct in the use of force, as an element in seeking the goods that political community can offer. It also puts us in touch with the moral theory of politics in which the idea of just war took root and out of which it developed. And if we seek to understand, interpret, and apply the idea of just war in the way I have argued for, by engaging the developing just war tradition of the past, then undertaking to think about war in the idiom of just war discourse opens a window into understanding and appreciating the history that has made us who we are, thus informing and deepening how we think about the moral values relating to political community and the use of armed force in the service of such community.

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[37] Walzer, *Just and Unjust Wars,* xiv.

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