

Just War, As It Was and Is

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The just war tradition came into being during the Middle Ages as a way of thinking about the right use of force in the context of responsible government of the political community. With deep roots in both ancient Israel and classical Greek and Roman political thought and practice, the origins of a specifically Christian just war concept first appeared in the thought of Augustine. A systematic just war theory came only some time later, beginning with Gratian's *Decretum* in the middle of the twelfth century, maturing through the work of two generations of successors, the Decretists and the Decretalists, and taking theological form in the work of Thomas Aquinas and others in the latter part of the thirteenth century. Later in the Middle Ages, and particularly during the era of the Hundred Years War, this canonical and theological conception of just war was further elaborated by incorporation of ideas, customs, and practices from the chivalric code and the experience of war, from renewed attention to Roman law, especially the *jus gentium*, and from the developing experience of government.

All this took place within a maturing theory of politics first outlined by Augustine in *City of God*, which conceived the good society as one characterized by a just order and thus one at peace both within itself and with other polities similarly justly ordered. Within this conception of politics the ruler's right to rule is defined by his responsibility to secure and protect the order and justice, and thus the peace, of his own political community and also to contribute to orderly, just, and peaceful interactions with other such communities.

The place of the justified resort to force within this overall conception was, for medieval and early modern thinkers alike, encapsulated in a verse from the Apostle Paul, Romans 13:4: "For [the ruler] is God's minister to you for good. But if you do evil, be afraid; for he does not bear the sword in vain. He is God's minister, an avenger to execute wrath on him that does evil." The use of armed force in this conception was thus both strictly justified and strictly limited: it might be undertaken only on public authority and for the public good. As Aquinas summed it up in the *Summa Theologica*, for a resort to the sword to be justified it must be on the authority of a sovereign, for a just cause rightly defined, and for a right intention, which included both avoidance of evil intentions and the positive aim of securing peace, peace understood, after Augustine, as *tranquillitas ordinis*, the tranquillity of a just political order. Elsewhere in the developing tradition limits were set on how such justified force might be used: certain classes of persons were normally to be treated as noncombatants and not to be harmed directly and intentionally in their persons or property, and lists were made of weapons not to be used because of their indiscriminate or especially deadly effect.

This was the tradition of just war in its classic form. Taking explicit shape in Christian theology and canon law, it was also a Christian tradition in a broader sense, the collected consensus of the Christian culture of the West on the justified use of force, set squarely within a normative consensus on the purpose of political order. This conception of just war was passed to the early modern age and known and used by such theorists as the Neoscholastics Vitoria, Soto, Molina, and Suarez, by the Protestant Reformer Martin Luther, the Puritan theologian William Ames, the

theologically trained jurist Hugo Grotius, and others at the dawn of the modern era. For all of them it constituted the consensual normative wisdom.

Because of the cultural changes of modernity, however, the just war tradition has been carried, developed, and applied not as a single cultural consensus but as distinct streams in Catholic canon law and theology, Protestant religious thought, secular philosophy, international law, military theory and practice, and the experience of statecraft. Thus we find examples of the just war tradition in theorists of the law of nations and in positive international law; we have a form of this tradition in modern military codes, rules of engagement, and praxis; and two of the most important theorists of just war over the past forty years have been the Protestant theologian Paul Ramsey and the political philosopher Michael Walzer. All these streams of thought have also produced other normative conceptions of the political community, of the roots and responsibilities of government, and of the relations among such communities. In the modern context the just war teachings of the Catholic Church lie alongside the contributions of these other spheres to the developing tradition.

Yet it is one of the great losses of just war thinking and of modern societies that from the middle of the seventeenth century through the middle of the twentieth, creative religious efforts to think through the meaning and implications of this tradition have ranged from occasional to notably lacking. In Catholic thought the idea of just war remained as an element in canon law and moral theology, but largely without substantive development, almost as a historical artifact. Perhaps more important in the larger picture, the concept of just war became increasingly disconnected from ongoing developments in Catholic thinking about the proper purpose of political order and the proper institutions to embody that purpose. The Catholic theory of international relations, which had originally been framed in terms of the Augustinian understanding of political order, justice, and peace within and among political communities, became increasingly tied to developments in secular international law, as we see in such works as John Eppstein's *The Catholic Tradition of the Law of Nations*, published in 1935. Meanwhile, Protestant thought, influenced by the moral idealism and historical optimism of the eighteenth and nineteenth centuries, followed a similar course but moved closer and closer to a form of utopian pacifism in which war would be eliminated because of the increasing perfection of human social institutions.

The past forty years have brought a recovery of the idea of just war in Christian ethical discourse, and this has invigorated a larger engagement with the just war idea in policy debate, in the military sphere, in philosophical thought, and in dialogue between moral reflection and international law. As a result of these developments, just war debate is more robust and widespread than in any period since the mid-sixteenth to mid-seventeenth century, the age of Vitoria and Suarez and Grotius. But important elements of the connection with the earlier tradition, the idea of just war in its classic form, have been lost in much of this debate, including in recent Catholic thought. On the one hand, confusion has emerged between the Church's commitment to its teaching on just war and what has come to be called "the Catholic peace tradition," a tradition of avoidance or renunciation of participation in armed force historically associated with the religious life but, since the Second Vatican Council, made over into a case for pacifism for Catholic laity as well. On the other hand, a line of interpretation has developed that has been influenced by the secular philosophical concept of *prima facie* duties, by prudential

(and contingent) judgments about the inherent immorality of contemporary war, and by well-intentioned but rather utopian investment in the United Nations system.

I will return to these themes below, but for now my point is a simple one: Catholic moral theology needs to reestablish a connection with the broader and deeper just war tradition, and especially with the form given that tradition in the classic period of its development. This is both important and necessary, in my view, for three fundamental reasons. First and most basic is the substantive reason: looking to the tradition in its classic form will bring Catholic thought on just war back into engagement with the conception of the use of force as a tool to be employed in the proper exercise of government to combat evil and other forms of injustice in the service of the public goods of justice, order, and peace.

Second, robust reflective engagement with the tradition of the Church is an essential element of the Catholic way to theological and moral clarity. Other elements are, of course, important as well: engagement with Scripture, philosophical reasoning, and reflection on empirical evidence. Protestant ethical reflection does all these as well, in different ways and with different emphases. But Catholic moral thought is distinctive because it holds that wisdom resides in the record of the Holy Spirit's interactions with the faithful through the history of the Church. For this reason one cannot be truly Catholic without respecting and seeking to understand the record of the tradition, and one cannot have a genuinely Catholic contemporary understanding of just war without a grasp of the Church's normative tradition on just war and its place in the theory of statecraft and international order.

Third, it is important for the broader contemporary just war debate for Catholic moral and political thought to reconnect with this normative tradition and to use that connection to advance and enrich that debate. Such enrichment is sorely needed. The conception of sovereignty as moral responsibility in the classic just war tradition contrasts importantly with the morally sterile concept of sovereignty in the Westphalian system. (Three centuries of experience with international relations stemming from the 1648 Peace of Westphalia have demonstrated that the principles of national sovereignty, territorial integrity, and noninterference in domestic affairs can, if interpreted in strictly procedural terms, conduce to protect tyrants while they oppress, rob, torture, and kill the citizens of their nations.) The conception of justice in a good social order as rooted in the nature of things and expressed through human moral responsibility for one another contrasts sharply with contemporary conceptions of justice, especially in international relations, as merely procedural, without substantive normative content. The conception of peace as an ordered tranquillity which must continually be worked for through history contrasts markedly with the utopian ideal of peace found in some religious and nonreligious thinking about the possibilities of international order, not to mention with the empirical reality of conflict within states and conflicts between states and nonstate actors in the contemporary world.

For a number of reasons Aquinas' formulation of the idea of just war provides a useful place to begin reengaging the classic just war tradition in its specifically Christian form. Let me identify three of the most important of these reasons. First, his formulation reflects and summarizes the debates of the previous century and a quarter, in which canonists and theologians collected, thought through, and systematically organized earlier normative Christian thought on the use of armed force. In particular, it exemplifies pithily and powerfully how Augustine's thought on

Christian moral and political responsibility lies at the center of this developing tradition. Second, Aquinas' conception of just war was the reference point for later theorists at the beginning of the modern era, including both Catholic theorists such as Vitoria, Molina, Soto, and Suarez, and Protestants such as Luther, Ames, and Grotius. Understanding Aquinas' conception of just war is essential for understanding these critical figures. Third, Aquinas' conception of just war places the resort to armed force squarely in the frame of the sovereign's responsibility for the good of the public order. His three conditions necessary for a just resort to force sovereign authority, just cause, and right intention correspond directly to the three goods of the political community as defined in Augustinian political theory: order, justice, and peace. This conception thus provides a model for how contemporary just war thought should be set within a moral theory of good politics, both within and among societies. There is, of course, a great deal more to the recovery of the full scope of the just war tradition than the recovery of Aquinas on just war. But he is a good place to begin.

"For a war (*bellum*) to be just," Aquinas writes, "three things are necessary": sovereign authority, just cause, and right intention. The first thing we should note here is the concept of *bellum*, usually translated "war." In contemporary usage "war" has certain particular meanings which we may wrongly read back into his. In positive international law it refers to a specific relationship of conflict between or among states, and more broadly to "armed conflict" that may involve nonstate actors within states or across national borders. In the debates over humanitarian intervention in the 1990s some moralists made a distinction between "war," which they understood as having to do with state uses of armed force for their own interests, and intervention by military force for humanitarian purposes, which they regarded as altruistic and not "war." Thus in 1998 the United Presbyterian Church in the United States adopted a resolution that accepted uses of military force for humanitarian intervention only so long as there were no national interests being served; use of force for those interests was opposed. In some quarters "war" refers only to aggression by military force, to be opposed not by "war" but by "legitimate self-defense." In the post-September 11 American debate, critics have assailed the term "war on terrorism" as wrongly emphasizing military force and deemphasizing reliance on law-enforcement methods. And so on.

Bellum in medieval usage referred to any use of armed force by a sovereign ruler, whether this force was applied internally to that ruler's society or externally. Its opposite was *duellum*, use of force on private authority and thus presumptively for private purposes. *Bellum*, in the terms of just war theory, might be just or unjust, depending on circumstances; *duellum* could only be unjust. The roots of this distinction lie in Augustine's thought: the service of private ends by private persons manifests *cupiditas* wrongly directed, self-centered love or motivation while efforts by those at the head of communities to serve the good of those communities show the effect of a concern for justice informed by *caritas*, rightly directed love. (It is for this reason, I suggest, that Aquinas places his discussion of just war in the context of his treatment of the virtue of *caritas*.)

Sovereign authority. Only a person in a position of responsibility for the good of the entire community may rightly authorize the use of the sword. Anyone not in such a position who resorts to the sword, for reasons however lofty, is guilty of disturbing the public good. The only exception to this is the use of arms in response to an attack under way or immediately offered,

but even this allowance disappears when public authority is at hand to combat this evil. So the authority of a sovereign is necessary for a just war, because we are here talking about *bellum*, the only kind of resort to the sword that may be just. That Aquinas puts this requirement first is not accidental but follows from the logic of the concept of just war being set out: only uses of force by sovereign authority have the potential to be justified; thus this is the primary criterion. Moreover, it is an element in the sovereign's responsibility for the public good that he must weigh the cause offered to determine whether it is just and must use force so as to manifest right intention. The Neoscholastics usefully elaborated on this responsibility, including within it the sovereign's responsibility to weigh the cause and his responsibility to get advice from knowledgeable persons; yet ultimately, responsibility for the decision about whether to use force rests with the sovereign alone.

Just cause. In listing the just causes for war Aquinas named two, citing them by means of a quotation from Augustine: recovery of that which has been wrongly taken, and punishment of evil. Not explicitly named here is the sole just cause for a state's resort to force on its own authority that is clearly allowed in our contemporary positive international law: self-defense against an attack under way or clearly imminent. The canon law from Gratian onward had included such defense in its listing of just causes for resort to arms, citing Isidore of Seville as the source. Aquinas surely knew the canonists on just war, so his omission of one of the three just causes recognized by the canon law needs some explanation. Keeping in mind the importance of Romans 13:4, Alfred Vanderpol has argued that for Thomas, and Scholastic just war theory in general, punishment of evil was the overarching just cause for resort to armed force, so that defense against attack was included within this category. This is, I think, close to the mark, but I suggest that Vanderpol has the relation reversed. Within the logic of Aquinas' just war theory, defense of the common good protecting just order and therefore peace is the central rationale for just war as a whole. Punishment of evil and retaking that which has been wrongly taken are thus two specific justifying causes within this larger conception of defense of the common good.

That Aquinas does not follow the canonists in explicitly naming defense against attack as a just cause for resort to force follows, I suggest, from his commitment to this larger conception of defense. Of course, the sovereign has the right to authorize resort to the sword in defense against attack under way or immediately offered; even private persons have such a right. But Aquinas does not build up a conception of defense as just cause on the basis of the private right of self-defense; rather, he builds down from his overall conception of the sovereign's responsibility for the good of the political community. Insofar as the need for defense provides just cause for public use of the sword, it comes from the responsibility of government to protect order, justice, and peace, not simply from the right to respond to an attacker in kind.

For a variety of reasons, including most importantly the change in the idea of sovereignty to the Westphalian model of a nation-state's territorial integrity, the development of international law on the state's right to use force has proceeded in the opposite direction, focusing on the right of self-defense. Recovery of that which has been wrongly taken and punishment of evil-doing are not explicitly named as justifications for the use of armed force by states in international law, but arguably they have been subsumed into the concept of self-defense: the former being recast as defense against an armed attack still in progress, as in the recovery of Kuwait from Iraq in 1991,

the latter being recast as the right of retaliation. In any case, we see that there are some significant differences between the idea of just cause in the classic just war tradition and contemporary international law. It may be that moral reflection on the former provides a useful critical perspective on the latter.

Right intention. The third necessity Aquinas names for a just resort to arms is right intention. If one reads recent Catholic just war thinking one regularly finds the idea of right intention collapsed into just cause or used to reinforce that moral requirement, as in this formulation from the Catholic bishops of the United States: “Force may be used only for a truly just cause and solely for that purpose.” For Aquinas the requirement of right intention is much more than this. He treats this requirement in two ways, negatively and positively. Negatively, he rules out evil intentions, exemplified in Augustine’s list from *Contra Faustum*: “What is evil in war? It is not the deaths of some who will soon die anyway. The desire for harming, the cruelty of avenging, an unruly and implacable animosity, the rage of rebellion, the lust of domination and the like these are the things which are to be blamed in war.” Positively, right intention is the purpose of establishing or restoring a disordered peace, or as Augustine puts it: “We do not seek peace in order to be at war, but we go to war that we may have peace.” Both the positive and the negative aspects of right intention are included in this third quotation, which Aquinas draws from the canon law (but wrongly ascribes to Augustine): “True religion looks upon as peaceful those wars that are waged not for aggrandizement, or cruelty, but with the object of securing peace, of punishing evildoers, and of uplifting the good.”

Right intention, then, as defined by Aquinas, includes both the avoidance of wrong intention and the positive aim of securing peace. It does not simply reduce to a restatement or reinforcement of the requirement of just cause. Rather, it focuses on two other things: the state of mind of the one who authorizes the war and those who fight under that authorization, and the fundamental moral purpose for all uses of force to achieve the peace that comes only with a justly ordered community. So once again, his conception of just war takes us back to the conception of politics within which and *only* within which the resort to armed force may be both justified and necessary. This is the full meaning of just war according to Aquinas.

Recent Catholic thought on war has, as I suggested earlier, diverged in important respects from the classic understanding of just war. The differences can be seen across a variety of official and nonofficial statements of the Catholic perspective in recent debates over uses of military force. Let me identify three important expressions of this divergence. First, in a phrase invented and popularized by the United States Catholic bishops, Catholic just war thought is represented as beginning with a “presumption against war,” so that the function of the just war criteria is redefined as only to overturn this “presumption” in special cases. Second, the logic of the classic just war tradition is reversed, so that within the *jus ad bellum* several recently invented prudential criteria are employed as if they were the most important, with correspondingly diminished attention to the fundamental deontological criteria, those described as “necessary” by Aquinas. Third, the context has shifted: in contrast to the traditional Catholic conception of the political community, and politics within such communities, as the means of achieving real if limited justice for human life in the world, and a corresponding theory of international relations, recent Catholic thought on war often treats the state as a locus of injustice and the goals of particular states as inherently at odds with the achievement of common human goals, while an

internationalism defined in terms of the United Nations system is proposed as the best means to those common goals. I will address each of these in turn.

The question of the “presumption against war.” The idea that Catholic just war teaching begins with a “presumption against war,” more recently phrased as “a strong presumption against the use of force,” first appears in the United States bishops’ widely read 1983 pastoral letter, *The Challenge of Peace*. In the context of its original adoption, this conception had three important roots. First, it reflected a judgment about modern warfare as inherently grossly destructive, so much so that it could never be conducted morally or be an instrument of moral purpose. In the immediate context of *The Challenge of Peace* this conviction was focused specifically on the question of nuclear weapons and whether they might ever be morally used; the United States bishops’ answer was No, and in this they concurred with a wide range of opponents of nuclear weapons around the world. Though in certain ways this pastoral letter drew on the thought of Paul Ramsey, the statement (without mentioning him by name) explicitly rejected Ramsey’s conception that even in the case of nuclear weapons the key issue is human moral control: Ramsey argued for the possibility of a rational, politically purposive use of nuclear weapons namely, counter-force warfare while the U.S. bishops rejected any and all possible “war-fighting” uses and plans for use of such weapons. Their conclusions about the likely result of any war involving nuclear weapons mirrored Jonathan Schell’s contemporaneous image of global nuclear destruction and the end of human life: a “republic of insects and grasses,” as he famously put it in *The Fate of the Earth*.

While the United States bishops focused on nuclear war, a more general judgment about modern war as inherently unjust had been present in Catholic thought since at least 1870, the year when a group of bishops, in a *Postulata* addressed to Pope Pius XI and the First Vatican Council, excoriated the expense of “huge standing and conscript armies” and the prospect of “illegal and unjust wars, or rather hideous massacres spreading far and wide.” The subsequent experience of the two World Wars reinforced, for many, this judgment on modern warfare. The generic term for this form of opposition to war as such is “modern-war pacifism,” with “nuclear pacifism” being one of its specific forms. One root of the idea of a “presumption against war” was thus this kind of judgment against modern war as such. The widespread nature of this judgment is likely one of the reasons this “presumption against war” concept, original to the United States Catholic bishops, has since 1983 become more broadly accepted as descriptive of the just war idea.

The problem with this conception of gross destructiveness as inherent in modern warfare, though, is that it is a contingent judgment being made to do service as a permanent truth. By contrast to the model of the two World Wars, as well as to imagined models of global nuclear holocaust, the actual face of warfare since 1945 has been that of civil wars and regional armed conflicts. Such armed conflict has indeed been bloody, sometimes genocidal, sometimes terroristic, always characterized by violence directed toward noncombatants; yet there has been no “World War III” or rather, given the ubiquity of this kind of conflict, this is in fact the face of “World War III.” The destructiveness of these recent wars has everything to do with the choices made by those who fight them and nothing to do with any alleged inherent destructiveness of modern weaponry. In other words, the modern-war pacifists get it wrong: their contingent judgment does not describe a permanent truth about warfare in the modern age. The morality of modern war, as of all war, depends on the moral choices of those who fight it. It is not the choice

to fight that is inherently wrong, as the “presumption against war” argument has it; it is the choice to fight for immoral reasons and/or by immoral means.

In its original context the second important root of the presumption against war was a formulation of this concept of just war set out in the Jesuit journal *Theological Studies* in 1978 by James F. Childress, an American academic ethicist of Quaker background. In this article Childress formulated just war theory in terms of the logic of prima facie duties as defined by the philosopher W. D. Ross. Childress argued that war is fundamentally morally problematic, as the killing in war goes against the prima facie duty of benevolence, which rules out killing or inflicting harm on other persons: “[B]ecause it is prima facie wrong to injure or kill others, such acts demand justification.” In just war theory the function of the various criteria is to provide this justification or, as Childress also puts it, to “overrule” the prima facie obligation. *The Challenge of Peace*, without reference to the logic of prima facie duties, replicates the structure of Childress’ 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 problem with basing a just war theory on the logic of an ethic of prima facie duties is that it has nothing to do with Catholic just war tradition. Childress’ argument is an interesting thought experiment, useful if there were no tradition of just war from which contemporary debate on war and morality might take its bearings, but his argument takes no account whatever of that tradition. Even though it borrows the tradition’s terminology (such terms as “just war” and “right intention”), it tries to redefine the content of those terms to fit the paradigm of prima facie duty. The result is something quite different from the Catholic concept of just war.

The third root of the U.S. bishops’ recasting of the Catholic conception of just war as beginning with a presumption against war was the pragmatic need to find a compromise between proponents of traditional Catholic just war theory and those Catholics who, under a variety of influences, had come to regard their faith as opposing war altogether. This opposition was distinctly different from the “modern-war pacifist” position, though adherents of both found they could make common cause in opposing contemporary warfare. That Catholicism could be regarded as pacifist is in many ways an odd notion, but the adherents of this position argued that the Second Vatican Council, in calling for the spirituality of the religious life to be expanded among the laity, implicitly extended the traditional non-involvement in war of the religious to all faithful Catholics. A “Catholic peace tradition” was described which blurred or erased the historical (and doctrinal) distinction between the “higher” morality of the religious and the “lower” morality of the laity.

There is, to be sure, a Catholic peace tradition, in the sense that there is a strong tradition denying the right of the sword to clergy and religious and assigning to the latter the obligation to pray for the realization of God’s peace. But there is also a tradition, that of just war, which describes the moral obligations of those in secular life, including those with the responsibilities (under God) of temporal rule, and the possibilities of peace in this world before the triumph of the City of God. This latter tradition is the tradition that includes the Augustinian conception of good politics as a just, and thus peaceful, social order; an associated conception of international

relations; and the idea of just war defining the instrumentality of the just use of force in the service of both. On these points, the 1997 *Catechism of the Catholic Church* gets it exactly right:

Respect for and development of human life requires peace. Peace is not merely the absence of war, and it is not limited to maintaining a balance of powers between adversaries. Peace cannot be attained on earth without safeguarding the goods of persons, free communication among men, respect for the dignity of persons and peoples, and the assiduous practice of fraternity. Peace is “the tranquillity of order.” Peace is the work of justice and the effect of charity (§2304).

There is no presumption against war here. Nor do I find one in Pope John Paul II’s strong words about the obligation of humanitarian intervention that such humanitarian intervention may be “necessary where the survival of populations and entire ethnic groups is seriously compromised.” In the Catholic conception of just war, the use of force may be necessary to right wrongs and to establish peace. To forget this, or to rework the just war idea so that it is nothing more than a set of rules for overriding a general judgment that force in itself is morally suspect, is to change the substance of the tradition.

The problem with trying to reconcile these two conceptions of Catholic ethics regarding war the “peace tradition” of the religious life and the just war tradition of secular life is precisely that they are so fundamentally different. Historically and conceptually these two ethics were distinct: they applied to people in two distinct walks of life; one had to do with ultimates, the other with historical realities. In Catholic understanding there should be no conflict between them, because they operate on different planes. The description of Catholic just war teaching as beginning with a presumption against war and ending with criteria whose function is to say when, if ever, that presumption can be overridden is faithful to neither of these Catholic traditions, that of the religious life or that of just war.

The problem of the prudential jus ad bellum criteria. As we have seen, Thomas Aquinas’ *jus ad bellum* consists of the requirements of sovereign authority, just cause, and right intention, including the purpose of peace, often listed as a separate requirement in recent just war thought. These are also the requirements recognized by the Neoscholastics and by early Protestant thinkers on just war. In recent writing on just war, however, it has become the norm for three prudential criteria to be added: last resort, the expectation that the good done by the resort to force will outweigh the evil (the criterion of overall proportionality, to be distinguished from the *jus in bello* requirement of proportionality), and a reasonable hope of success. Exactly when and under what circumstances these began to be used is unclear. John Eppstein, writing *The Catholic Tradition of the Law of Nations* between the World Wars, argues that proportionality and last resort are to be found in the arguments of the Neoscholastics, but the texts he cites do not clearly make the case. It is likely, I suggest, that these prudential criteria reflect the same uneasiness with modern war that gave rise to modern-war pacifism. Arguably they are elements in the prudent exercise of statecraft, but including them as specific requirements of the *jus ad bellum* is a comparatively recent development.

Once they are there, though, the question is how they are to be used. My own judgment is that they should be understood as supportive criteria, secondary to the primary deontological requirements. This understanding retains the fundamental logic and the priority of the classic just war criteria while providing a structured role for prudential exercise of statecraft. On this model, resort to force is justified only when it is undertaken by sovereign authority, for a just cause, and with a right intention, including the purpose of establishing or restoring peace. By consideration of the prudential criteria, then, the sovereign authority determines whether the use of force already determined to be justified is in fact wise to undertake. It may not be. Not everything that is morally justified is prudent to do. But to determine that a particular use of force is imprudent is not the same as determining that it would be unjust.

Recent just war thought, though, has included many examples of using the prudential criteria as if they alone permitted one to judge the justice of a war. Consider this from former United States President Jimmy Carter, writing in the context of the debate in 2003 over whether the United States should use force to end the Saddam Hussein regime in Iraq: representing himself as “thoroughly familiar with the principles of a just war,” Carter went on to list those principles as he understands them: last resort, “with all nonviolent options exhausted”; discrimination, proportionality “to the injury we have suffered”; legitimate authority, and a peace superior to what exists. The two classic just war requisites listed, legitimate authority and the end of peace, are listed last here, behind last resort, proportionality, and the *jus in bello* principle of discrimination, which here does duty as a *jus ad bellum* requirement.

The problem is not just with non-Catholics or secular policy types. Consider the following from the *Catechism*. After reducing the just causes for resort to force to one, self-defense (§2308), the *Catechism* further limits this in §2309 by four prudential conditions, all of which it says must be satisfied: “the damage inflicted by the aggressor on the nation or the community of nations must be lasting, grave, and certain; all other means of putting an end to it must have been shown to be impractical or ineffective [last resort]; there must be serious prospects of success; the use of arms must not produce evils and disorders graver than the evil to be eliminated. *The power of modern means of destruction weighs very heavily in evaluating this condition*” (emphasis added). The section concludes, “These are the traditional elements enumerated in what is called the ‘just war’ doctrine.”

Now, it is possible to read these requirements in the way I suggested earlier: as supplemental to the fundamental requirements of the classic just war tradition as enumerated by Aquinas and others. But somehow right intention, including the end of peace, has been forgotten here, and these prudential requirements are represented as themselves being “the traditional elements in what is called the ‘just war’ doctrine.” Moreover, how is it possible to read the reference to “the power of modern means of destruction” without recalling the role of this judgment in leading to the novel idea of a presumption against war? In this section I believe the contemporary *Catechism* has lost sight of an important part of the just war tradition.

As these examples show, the prudential criteria can be used in such a way as to displace the deontological requirements of classic just war tradition. Another problem arises when they are used as a springboard to a functional pacifism. Consider again the case of the United States Catholic bishops, this time in their official opposition to the use of armed force to eject Iraq from

Kuwait after Saddam Hussein's army had aggressively annexed that country in 1990. Testifying before the Senate Foreign Relations Committee, Archbishop John R. Roach, speaking on behalf of the bishop's conference, held out the prospect of an indiscriminate air war, a conflagration that would spread to the entire Middle East, and a result that might leave "the people of Kuwait, the Middle East, and the world" worse off than if force had not been used.

Since the people of Kuwait had already had their country taken from them and were being systematically robbed and brutalized, it is hard to imagine how, realistically, they could have been made worse off by a use of force to eject the occupiers. And Roach's references to the Middle East carry the message that he assumed that the use of force against Saddam Hussein's military would produce a regional conflagration. As to the people of the world, Roach did not mention the international-law argument against aggression or anticipate the Security Council's declaration that Iraq was guilty of aggression and was a threat to international peace and security.

In short, I do not see how Archbishop Roach's use of the prudential criteria here can be read in any other way than as to seek to prevent the use of force in the face of the most obvious case of international aggression since World War II. Of course there were others at the same time making similar claims, just as President Carter made them a decade later in the context of another debate over the justness of the United States' use of force against Saddam Hussein's Iraq. But that underscores my main point: that the contemporary use of the prudential criteria of last resort, proportionality, and reasonable hope of success treats them as if they were the main themes in the just war idea. Such an interpretation magnifies the evils to be expected from a resort to force, regardless of any arguments for the justice of the cause, and thus transforms the presumption against war into a functional pacifism. Once more, the just war tradition deserves better.

The state as the problem. It is no secret that the state system has been under attack by various kinds of critics for some time. Among the many positions taken by these critics, the argument most relevant to our present theme is that the rise of international institutions under the umbrella of the United Nations system represents the leading edge of a new global system of government that has superseded the state in important respects, including the right to judge when resort to armed force is legitimate.

Is this argument correct? It is, at least, apparent that the debates about humanitarian intervention by military force in the last decade, about the creation of international criminal tribunals in a number of cases, about the idea of a state's "universal jurisdiction" in cases of violations of the Genocide Convention or other "crimes against humanity," about how far the global war on terror may proceed without violating the rights of states, and most recently, about the United-States-led use of force against the Saddam Hussein regime in Iraq, have all raised important points of positive and customary international law, and that in every one of these cases the outcome remains unsettled.

The current international system has its ideological roots in the Enlightenment and is closely tied to the advocacy of such a system as a way of achieving what Kant called "perpetual peace." In the context of Enlightenment-inspired optimism about the possibility of perfecting human institutions in history, this became a utopian form of pacifism in which the right kind of

international institution would mean the end to all war. The United Nations system itself expresses this ideal. Formed in the immediate aftermath of World War II, the United Nations in its Charter embraced the goal of ending war and sought to implement this by the method already tried in the 1928 Pact of Paris (also called the Kellogg-Briand Pact), despite its inability to prevent the German and Japanese aggression that initiated the war whose shadow lay over the Charter. But though Article 2 of the Charter sought to outlaw any use of armed force between or among states except in defense against aggression, it did not clearly define what counted as aggression a matter that remains unsettled, as the recent debate over what counts as legitimate preemption testifies. Moreover, in Article 51 the Charter explicitly permitted individual and collective resort to force in self-defense, thus reaffirming the centrality of the idea of self-defense in customary law, but without doing anything to limit the rights of states to decide when they are threatened and thus able to resort to force in defense.

Finally, in Chapter VII the Charter gave the Security Council the power to authorize force in cases of threats to international peace and security, without clearly defining what such threats might look like and without taking account of the fact that the states who are members of the Security Council at any given time might have different views on this matter because of their own perception of their national interests. The United Nations is far from being a world government. Its efforts to limit and restrain the use of force depend importantly on the decisions taken by individual states, and its management of world crises has sometimes been so inept as to raise the question whether, in its institutional incarnation, it is at all able to achieve the goals of its Charter.

Relentlessly negative portrayals of the nation-state as an institution both disregard the positive attributes and accomplishments of the state system and ignore specific differences in how particular states are constituted and how they have behaved. In the internationalist realm, this criticism of states is often accompanied by an equally uncritical attitude toward the possibilities of international order as expressed in the United Nations. The United Nations has admittedly been the locus of some success in establishing an international order based on high moral values. Yet it has also had conspicuous failures. With respect to its responsibilities regarding the use of armed force, I suggest that its failures are the result of fundamental limitations embedded in its character as an international organization: it is not, in the language of an earlier generation of political thought, a perfect political community. It lacks in itself the attributes necessary to make it capable of effectively playing the role stipulated in its Charter. It lacks cohesion, so that its policies and decisions have led to inconsistency in the conflicts it has addressed. It lacks sovereignty, so that it depends on agreements among its sovereign member states. It lacks accountability to the people whose rights and dignities it professes to represent. It lacks an effective chain of command for military forces it may wish to deploy in a conflict, which means such forces cannot be an effective arm of international statecraft.

In terms of the just war tradition regarding the just use of force, its most important defects are those stemming from the lack of sovereign authority. Since without such authority there is no entity competent to determine just cause, exercise right intention, aim at the establishment of peace, and control armed forces in accord with the moral limits of the *jus in bello*, this lack of sovereignty means that the United Nations as an institution cannot have a *jus ad bellum* in the fundamental just war sense. Legally, the lack of these characteristics undermines the positive-law

definition of just cause whereby certain rights are reserved to the Security Council while being denied to individual states or other organizations or groupings of states.

All this is not to say that states themselves as a category or as individuals always conduct themselves according to the highest standards. Many states fail one or more of the standards just mentioned, and many fail in their obligation to secure the good of their people. But international organization has not superseded the state; for it to function well, it must depend on states that function well.

Traditional Catholic thinking about international relations was based on an older understanding of and appreciation for individual political communities as the loci within which a social order embodying justice in all its aspects might be established and maintained, thereby securing peace as the tranquillity of that just order. No other human community, on this conception, has such a character. Because of the responsibilities of the political community its leadership possessed certain powers and rights, including those of the use of force. Some recent comments by officials of the Holy See have expressed the position that today only the Security Council can legally authorize and morally legitimate the use of armed force in the pursuit of peace, security, and order. As I noted above, this is not clear in contemporary debate over the meaning of positive and customary international law, and the case for this position must be argued, not merely asserted. I suggest that within the Catholic context the proper frame for such argument is a normative understanding of good statecraft in the service of the goods that the political community exists to secure.

I conclude by identifying four particular challenges to be met in recovering the classic just war tradition for moral reflection, policy, and action regarding the use of armed force today. In doing so, I highlight what is implicit in what I have said thus far. The first three correspond to the three requisites found in classic just war tradition for a just resort to armed force requisites we have seen through the lens of Aquinas' just war theory. The fourth challenge arises from how war is conceived, for this is fundamental both for the question of a just resort to force and for right conduct in the use of such force.

The first challenge is to recover the moral element in the classic just war conception of sovereign authority: a conception of sovereignty as responsibility for the common good. This conception contrasts importantly with the Westphalian conception of sovereignty as rule over a particular territory and the people it contains, a conception embodied in the United Nations system of international order. This latter understanding embodies real benefits, but it also has glaring faults. As far too many historical examples have shown, it gives cover to individuals and parties who use the powers of rule to menace and oppress their own people and others while seeing to no higher end than their own aggrandizement. Something is very deeply flawed in a conception that casts the mantle of sovereign protection over demonstrably evil rulers as diverse as Mobutu, Milosevic, Saddam Hussein, and Kim Jong Il. The classic just war conception of sovereignty as moral responsibility provides a frame within which good rule can be distinguished from bad, for encouraging the best and critically addressing the worst, with promise for a more morally robust understanding of the international order.

The second challenge is to examine in depth what should count as just cause for use of force in the contemporary context. The classic just war tradition gives us three benchmarks: recovery of that which has been wrongly taken, punishment of evil, and overall defense of the common good. How can and should these benchmarks provide guidance in the present confused debate, with rival claims being made on behalf of the limits on just cause provided in the United Nations Charter, a well-developed sense that resort to force by individual states is not only proper but even obligatory to end and remedy egregious abuses of basic human rights, and a newly invigorated conception of the right of states to defend themselves in the face of the evils of terrorism and the proliferation of nuclear, chemical, and biological weapons? I have my own ideas on this, but my point here is that this question needs to be seriously engaged. All these claims are worth taking seriously, and all have their often passionate partisans. It is not enough simply to endorse or dismiss one or another of these disparate conceptions of the right use of force before they have all been examined. To reengage the classic just war tradition is to take a principled path to creative moral reflection on these various claims and the debate among them.

The third challenge is to examine closely and weigh carefully the question of right intention in any use of armed force. The classic tradition rightly held that not all uses of armed force are morally equivalent: some are wrongly motivated, while others aim at right. The two aspects of the concept of right intention address these two opposite possibilities. Such intention in the classic just war tradition, as we have seen, includes the avoidance of wrong intentions, which easily translate from Augustine's list into familiar contemporary evils: aggressive war for the aggressor's sole benefit; wars for reasons based on religious, ethnic, or ideological difference; use of force aimed at terrorizing or oppressing those on whom it falls for the benefit of the wielder of power. At the same time, right intention means that the resort to force should be aimed at restoring peace where it has been disordered or establishing it where it has never been. I suggest that this means that for any use of force to be justified, it should not only respond to the disordering or absence of peace but should also include concrete plans for creating a peaceful society in the aftermath of conflict. Thinking in this way requires giving up on the idea that all uses of force are morally equivalent because all force is evil. It also carries important implications not only for individual states that employ force for just cause but also for the responsibilities of other states in the international order and for that order as a whole.

The fourth challenge is to confront realistically the face of contemporary war. Earlier I identified, in order to fault it, the conception that all modern war is inherently indiscriminate and disproportionate in its destruction, so that modern war as such must be opposed. Such a conception of modern war is the root of the idea that just war theory, at least today, must begin with a presumption against war. The sort of war envisioned has as its models the carnage of the trenches in World War I, the bombing of cities in World War II, and the expectation of global catastrophe that would result from a superpower nuclear war. This conception of war also has as its villains the states who engage in it, so that states, instead of being potential sources of human good, are recast as the agents of massive evil. The influence of this understanding of war can be easily identified in recent debates over particular uses of force. But as I have noted, the actual face of recent warfare differs markedly from this, as it involves civil wars, uses of force by non-state actors, and massive harm to the innocent not from the use of horrific weapons but because they are made the direct targets of weapons ranging from knives to automatic rifles to suicide bombs. The actual villains here are not states as such but regional warlords, rulers who oppress

their people to maintain or expand their power, and individuals and groups who use religious or ethnic difference as a justification for oppression, torture, and genocide. This is, as I suggested earlier, the real “World War III,” not a repeated and more horrible update of the London Blitz or the bombings of Dresden and Hiroshima. Those who claim that “modern war” is inherently unjust seem to me to have missed all this.

They also seem to me to have missed something else that is very important. As progressively shown in the Gulf War of 1990-91, the bombing of Serbia over the oppression of the Albanian Kosovars, the campaign in Afghanistan aimed at al-Qaeda and the Taliban, and most recently (and most fully) in the recent use of armed force to remove the Saddam Hussein regime in Iraq, the United States, and to an important degree also the British, have channeled high technology in ways that allow war to be fought according to the actual principles of the just war *jus in bello*: this includes avoidance of direct, intended harm to noncombatants and avoidance of disproportionate harm in the use of otherwise justified means of war. The results, for those who care to look at them, are simply astonishing, especially by contrast to the level of destruction and the harm to noncombatant lives and property found, say, in carpet-bombing. This, too, is the face of modern war.

Today we see a new kind of confrontation. On the one hand, we see non-state actors, as well as warlords and heads of state who use relatively unsophisticated means to gain their ends by targeting, terrorizing, and killing noncombatants and, as in the destruction of the World Trade Center towers or the bombing of the Madrid trains, intentionally causing lasting property damage, civilian deaths, and widespread fear. On the other hand, we find a state that has used its intellectual and economic capital to develop weapons, tactics, strategies, and training directed toward maximizing discrimination and proportionality in the use of armed force. Both of these developments in the actual face of war need to be taken seriously and integrated into a contemporary moral assessment of war based on a recovery of the classic meaning of the just war tradition.

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