

Books by Jean Bethke Elshtain

*PUBLIC MAN, PRIVATE WOMAN:
WOMEN IN SOCIAL AND POLITICAL THOUGHT*

EDITOR, THE FAMILY IN POLITICAL THOUGHT

MEDITATIONS ON MODERN POLITICAL THOUGHT

WOMEN AND WAR

CO-EDITOR, WOMEN, MILITARISM, AND WAR

EDITOR, JUST WAR THEORY

POWER TRIPS AND OTHER JOURNEYS

*CO-AUTHOR, BUT WAS IT JUST?:
REFLECTIONS ON THE PERSIAN GULF WAR*

DEMOCRACY ON TRIAL

CO-EDITOR, POLITICS AND THE HUMAN BODY

REAL POLITICS: AT THE CENTER OF EVERYDAY LIFE

AUGUSTINE AND THE LIMITS OF POLITICS

*WHO ARE WE?: CRITICAL
REFLECTIONS, HOPEFUL POSSIBILITIES*

*NEW WINE AND OLD BOTTLES:
INTERNATIONAL POLITICS AND ETHICAL DISCOURSE*

CO-AUTHOR, RELIGION AND AMERICAN PUBLIC LIFE

JANE ADDAMS AND THE DREAM OF AMERICAN DEMOCRACY

EDITOR, THE JANE ADDAMS READER

JUST WAR AGAINST TERROR

*The Burden of American
Power in a Violent World*

JEAN BETHKE ELSHTAIN

BASIC
B
BOOKS

A Member of the
Perseus Books Group

3 WHAT IS A JUST WAR?

IN THE IMMEDIATE AFTERMATH of September 11, I said to a friend, "Now we are reminded of what governments are for." The primary responsibility of government is to provide basic security—ordinary civic peace. St. Augustine calls this form of earthly peace *tranquillitas ordinis*. This is not the perfect peace promised to believers in the Kingdom of God, the one in which the lion lies down with the lamb. On this earth, if the lion lies down with the lamb, the lamb must be replaced frequently, as Martin Luther opined with his characteristic mordant wit.¹ Portions of the U.S. Constitution refer specifically to security and public safety. "To ensure domestic tranquility" was central to what the new order being created after the American Revolution was all about. None of the goods that human beings cherish, including the free exercise of religion, can flourish without a measure of civic peace and security.

What good or goods do I have in mind? Mothers and fathers raising their children; men and women going to work; citizens of a great city making their way on streets and subways; ordinary people flying to California to visit the grandchildren or to transact business with col-

leagues—all of these actions are simple but profound goods made possible by civic peace. They include the faithful attending their churches, synagogues, and mosques without fear, and citizens—men and women, young and old, black, brown, and white—lining up to vote on Election Day.

This civic peace is not the kingdom promised by scripture that awaits the end time. The vision of beating swords into plowshares and spears into pruning hooks, of creating a world in which "nation shall not lift up sword against nation, neither shall they learn war anymore," is connected with certain conditions that will always elude us. That vision presupposes that all persons are under one law. But our condition of pluralism and religious diversity alone precludes the rule of one law. Moreover, our condition of fallibility and imperfection precludes a world in which discontents never erupt.

That said, the civic peace that violence disrupts does offer intimations of the peaceable kingdom. If we live from day to day in fear of deadly attack, the goods we cherish become elusive. Human beings are fragile creatures. We cannot reveal the fullness of our being, including our deep sociality, if airplanes are flying into buildings or snipers are shooting at us randomly or deadly spores are being sent through the mail. As we have learned so shockingly, we can neither take this civic peace for granted nor shake off our responsibility to respect and promote the norms and rules that sustain civic peace.

We know what happens to people who live in pervasive fear. The condition of fearfulness leads to severe isolation as the desire to protect oneself and one's family becomes overwhelming. It encourages harsh measures because, as the political theorist Thomas Hobbes wrote in his 1651 work *Leviathan*, if we live in constant fear of violent death we are likely to seek guarantees to prevent such. Chapter 13 of Hobbes's great work is justly renowned for its vivid depiction of the horrors of a "state of nature," Hobbes's description of a world in which there is no ordered civic peace of any kind. In that horrible circumstance, all persons have the strength to kill each other, "either by secret machination, or by confederacy with others." The overriding emotion in this nightmarish world is overwhelming, paralyzing *fear*, for every man has become an enemy to every other and

men live without other security, that what their own strength, and their own invention shall furnish them withal. In such condition, there is no place for Industry; because the fruit thereof is uncertain, and consequently no Culture of the Earth; no Navigation, nor use of the commodities that may be imported by Sea; no commodious Building; no Instruments of moving, and removing such things as require much force; no Knowledge of the face of the Earth; no account of Time; no Arts; no Letters; no Society; and which is worst of all, continuall feare, and danger of violent death; And the life of man, solitary, poore, nasty, brutish, and short.²

This is Hobbes's famous, or infamous, war of all against all.

TO PREVENT THE WORST FROM HAPPENING

Many, myself included, believe that Hobbes overstated his case. But there is a powerful element of truth in his depiction of the state of nature. Without civic peace—a basic framework of settled law and simple, everyday order—human life descends to its most primitive level. By primitive I mean rudimentary, the bare minimum—we struggle just to stay alive. The face of such worlds is known to us. We saw it in Somalia under the warlords. We saw it under the Taliban in Afghanistan, where horrible disorder prevailed in the name of order. When government becomes destructive of the most basic end for which it is instituted, *tranquillitas ordinis*, it abandons its minimal *raison d'être* and can no longer be said to be legitimate. This assumption is essential to political theory. All political theories begin with a notion of how to establish and sustain order among human beings. Some go beyond this minimal requirement to ask how human beings can work to attain justice, or serve the common good, or preserve and protect political liberty. But none of these other ends can be served without basic order. George Weigel defines *tranquillitas ordinis* as “the peace of public order in dynamic political community,” insisting that there is nothing static about “the concept of *tranquillitas ordinis* as it evolved after Augustine.”³

The primary reason for the state's existence is to create those minimal conditions that prevent the worst from happening—meaning, the worst that human beings can do to one another. How do we prevent people from devouring one another like fishes, as Augustine put it? This task is in the first instance one of interdiction: preempting horrible things before they occur. Not all misfortune, catastrophe, or crime can be prevented. What Augustine calls “carking anxieties” are part of the human condition. But we can try to eliminate as many of the conditions that give rise to catastrophe as possible. We can refuse to tolerate violent crime and arbitrary, chaotic disorder. It is horrific to stand in the ruins of a once flourishing city or a section of a city and to know that a government could not prevent what happened there—or was, even worse, the agent of destruction. Imagine such horror as a daily occurrence. If this were our circumstance, we would rightly seek the restoration of basic, minimally decent civic peace and order. And we would rightly ask: Could none of this have been prevented? Is the government somehow responsible for the chaos and destruction? If our answer to the former question is yes, we are likely to call for a new government.

It is difficult for us to imagine anarchy and dread unless we have been victims of random violence of some kind. Otherwise, it is easy for us to lose a sense of urgency. But government cannot and must not lose that sense of urgency. Any government that fails to do what is within its rightful power and purview in these matters is guilty of dereliction of duty. Order is “the condition for the possibility of virtue in public life,” Augustine believed, and “such a peace was not to be deprecated: It allowed fallen human beings to ‘live and work together and attain the objects that are necessary for their earthly existence.’”⁴

This does *not* mean that our absolute, unquestioned obedience to duly constituted authority is required. Given the temptations attendant upon the exercise of power, authority may overstep its rightful bounds, itself become lawless, and thereby lose its legitimacy.

Augustine appreciated that power is a basic reality of political life. How is power used? To what end? Augustine knew that questions concerning the ethics of power and its use or abuse are most exigent when it comes time to debate war and peace. Augustine launched a great tradition of reasoning on the ethics of the use of force called the *just war tradition*.

It is this tradition that provides a conceptual framework for interpreting and analyzing America's war against terrorism.

MAKING A CASE FOR THE JUST USE OF FORCE

It is unsurprising that the events of September 11 inspired Americans, from President Bush to the average man and woman on the street, to speak of justice as a way to characterize our response to the intentional slaughter of almost three thousand innocent men, women, and children. When citizens evoke justice, they tap into the complex Western tradition called "just war." The origins of this tradition are usually traced from St. Augustine's fourth-century masterwork, *The City of God*. In that massive text, Augustine grapples with how best to think about force and coercion in light of the fact that the Christian Savior was heralded as the Prince of Peace by angels proclaiming "peace on earth and goodwill" to all peoples. Jesus resisted taking up arms in his own behalf or asking others to do so. How, then, can a Christian take up arms? That is the question that animated the just war tradition, which had several aims: to articulate occasions for the legitimate resort to force; to ensure that war derives from the use of right authority by those responsible for public order; to limit the means to be deployed even in a just cause; and to hold warfare, one outgrowth of political rule, up to ethical scrutiny.

Consider the terms: *justice* and *war*. The presupposition of just war thinking is that war can sometimes be an instrument of justice; that, indeed, war can help to put right a massive injustice or restore a right order where there is a disorder, including those disorders that sometimes call themselves "peace." This latter concern was part of St. Augustine's brilliant deconstruction of the official rhetoric of the Roman Empire. The Romans, Augustine argues, created a desert and called it peace. "Peace and war had a contest in cruelty, and peace won the prize," he notes, lacing his commentary with characteristically heavy irony. So peace should not be universally lauded even as war is universally condemned. Each must be evaluated critically. Many horrors and injustices can traffic under the cover of "peace." Indeed, there are worse things

than war. The twentieth century showed us many of those worse things, including gulags and genocides. The world would have been much better off if the violence of particular regimes had been confronted on the battlefield earlier; fewer lives would have been lost over the long run.

Many Christians claim for early Christianity a uniform peace tradition and peace politics. They insist that for its first three centuries Christianity was pacifist and then fell away from a tradition of nonviolence, its only authentic tradition. They believe that the teachings of Jesus rule out any use of force, even force deployed at the behest and under the limits of legitimate authority and ethical restraint. But this characterization of early Christianity does not bear up under close scrutiny. For one thing, the strongest pacifist arguments in the early church are associated with theologians who fell outside the Christian mainstream, such as Origen and Tertullian. More powerful and more mainstream to the Christian tradition are the arguments of St. Augustine, St. Ambrose, and, later, St. Thomas Aquinas, all associated with the just war tradition.⁵ These latter regarded their arguments as a consistent evolution from early Christian teaching, not a deviation from it. They knew that in a fallen world, filled with imperfect human beings, we cannot achieve perfection in earthly dominion, in religious life, or in anything else, and that—even more important—we all have a responsibility to and for one another to serve and to love our neighbors. If our neighbor is being slaughtered, do we stand by and do nothing?

Martial metaphors abounded in the early Church. One could be a nonviolent soldier who suffered violence bravely for Christ rather than assault others: These Christians were the *milites Christi*. And indeed, being a soldier for Christ, with all the explicit imagery of stalwart fortitude, fit with the lore of the early Church. Sacralizing suicide, or homicide, or other evils would certainly be inconsistent with Christian doctrine, but soldiering is another matter.

Christian involvement with force goes beyond metaphor, however. When Jesus made the distinction between serving God and serving Caesar, Christians were obliged to take the measure of earthly rule and dominion rather than condemn it or its necessities outright. The most famous—and to Christian pacifists nigh-infamous—passage in this regard is in St. Paul's Letter to the Romans, in which he calls upon believers to obey the governing authorities: "Let every person be subject to

the governing authorities. For there is no authority except from God, and those that exist have been instituted by God" (Romans 13:1).⁶

Most important for our purposes, St. Paul claims that earthly dominion has been established to serve God and to benefit all human beings. It is the *rightful authority* of earthly kings and kingdoms to punish wrongdoers. Matters of temporal justice must not be left to self-help. The prospect of leaving questions of righting injustice and imposing penalties in the hands of each and every person conjures up a nightmare of private warfare, vengeance, and vendettas. And that is precisely what the historic record displays in abundance when no entity has been assigned the legitimate use of force to forestall the chaos of private warfare. Because the Church is to serve all, and because Christians believe evil is real, both justice and charity may compel us to serve our neighbor and the common good by using force to stop wrongdoing and to punish wrongdoers.

Of course, earthly rule can become a great disorder. In such a dire circumstance, the Christian may choose to suffer the evil of others, for protecting one's own life is not the highest value. But those in positions of authority and those who can help to spare others from suffering have an obligation to do so. Earthly peace, as imperfect as it is, is better than the nightmare of Thomas Hobbes's war of all against all. The early Christian community drew the line of obedience to the state at emperor worship, for "Thou shalt have no other gods before me." Because they refused to pay homage to the emperor, many early Christians were martyred. But in these first generations of Christian life after the crucifixion of Jesus, there is little evidence that the faithful were enjoined from serving in either the Roman army or police forces.

Augustine also tells us that Christians, if called upon, should take up the worldly political vocation of judge. This is a tragic vocation, since a judge can rarely be absolutely certain about the guilt or innocence of defendants. Truth is often hidden, or the full truth is. Inevitably, a judge winds up punishing some who are innocent and releasing some who are guilty. But Christians, if called, are obliged to do this work.

The dilemmas of judging speak to the nature of earthly rule more generally. It rarely admits of absolutes, and there are usually no bright lines separating alternatives. Carl von Clausewitz, the great German theorist of war, spoke famously of "the fog of war." Augustine would find that phrase apt as a characterization of governing overall. Responsible

public authorities are always compelled to act in a kind of fog. As with waging war, the most certain thing about governing is its uncertainty. It is the armchair critics commenting from the sidelines who think the choices are absolutely clear. To be sure, a cause may be clear—opposing the indiscriminate horrors of terrorism, for example—but the means used to promote it may not admit of the same crystalline clarity. The just, or justified, war tradition recognizes this difference by giving us an account of comparative, not absolute, justice.

Although the just war tradition originated in early Christian history and was refined over the centuries by Christian theologians, it would become secularized, though not stripped of ethical content, when it was absorbed into the thinking of international law and many of its ethical restraints were encoded in both the Geneva and Hague Conventions.⁷ By the beginning of the twenty-first century, the just war tradition had become part of the way in which much of the world spoke of war and peace questions, especially such matters as noncombatant immunity, proportionality, and the treatment of prisoners. International law states that intentional attacks on noncombatants violate not only recognized rules of warfare but universal humanitarian standards.

HOW TO DECIDE WHETHER A WAR IS JUST

What occasions or events justify the use of violence? Augustine begins by specifying what is not permitted: Wars of aggression and aggrandizement are unacceptable because they violate not only the civic peace but the framework of justice. Once again we see that, in deciding whether a war is just, we must get the critical distinctions right, beginning with a distinction between peace and justice. Some versions of "peace" violate norms of justice and do so egregiously. For the sake of keeping the peace, statesmen often acquiesce in terrible injustices.

Peace is a good, and so is justice, but neither is an absolute good. Neither automatically trumps the other, save for those pacifists who claim that "violence is never the solution," "fighting never settled anything," and "violence only begets more violence." Does it? Not always, not necessarily. One can point to one historical example after another of

force being deployed in the name of justice and leading to not only a less violent world but a more just one.

Consider the force used to combat Japanese militarism in World War II. Defeating Japan in the war, occupying Japan in its aftermath and imposing a constitutional order did not incite further Japanese aggression of the sort witnessed in its full horror in what came to be known as "the rape of Manchuria." What emerged instead was a democratic Japan. Are there living Japanese who believe it is time to return to a violent world of militarist dominance or the world of violent self-help associated with the samurai tradition? When the great Japanese writer Yukio Mishima called for a mass uprising and restoration of the old militarism in 1970, only a couple of pathetic disciples responded. Mishima's bizarre fantasy of the return of a more violent world was regarded by the Japanese as daft and nigh-unintelligible.

All violence, including the rule-governed violence of warfare, is tragic. But even more tragic is permitting gross injustices and massive crimes to go unpunished. Just war stipulates that the goods of settled social life cannot be achieved in the face of pervasive and unrelenting violence. The horror of today's so-called failed states is testament to that basic requirement of the "tranquillity of order." In Somalia, as warlords have jostled for power for more than a decade, people have been abused cynically and routinely. Anyone at anytime may be a target. The tragedy of American involvement in Somalia is not that U.S. soldiers were sent there, but that the American commitment was not sufficient to restore minimal civic peace and to permit the Somalian people to begin to rebuild their shattered social framework. Can anyone doubt that a sufficient use of force to stop predators from killing and starving people outright would have been the more just course in Somalia and, in the long run, the one most conducive to civic peace?²⁸

Organized force, fighting under rules of engagement in order to minimize civilian casualties, can help to create the safe surround that permits civic peace—*tranquillitas ordinis*—to flourish. Force used as an instrument of justice is not random, uncontrolled violence. It is not violence as an instrument of terror for terror's sake. It is not private violence. It is the use of force at the behest of *right authority*.

Some American films have done a better job of grappling with the question of force than many contemporary analysts and commentators.

One of the greatest, *The Man Who Shot Liberty Valence*, directed by the incomparable John Ford, offers up a reflection on violence in the service of politics and settled law in the absence of viable right authority. Liberty Valence is a vicious outlaw who preys on innocents, high and low. Everyone is terrified of him, including the local "right authority," the sheriff in the small town of Shinbone. Lawyer Ransom Stoddard (played by James Stewart) journeys west, but before arriving in town to set up a law office Stoddard is introduced to lawless Shinbone when his stagecoach is robbed by Valence and his gang. Stoddard is beaten to within an inch of his life.

Enter John Wayne as the tragic character, Tom Doniphon. The only way to deal with Valence, says Doniphon, is to run him out of the territory or disarm him, Doniphon tells the resistant Stoddard. Disarming Valence means killing him, for he will never disarm voluntarily and Shinbone's sheriff (played by Andy Devine) is too terrified to arrest him. Right authority has abandoned its post when confronted with untrammelled viciousness.

Doniphon's argument might be called an ethic of controlled violence. Law exists. Who will enforce it? The film tells us that settled law and its routine enforcement are possible only when random violence and the fear it instills have been pushed back. Doniphon proves to be right, although at the cost of personal tragedy to himself. *The Man Who Shot Liberty Valence* is a parable on the use of force at the service of civic peace in the fog of an undeclared war in which the forces of violence are pitted against all those who want to settle, raise their families, and educate their children. The film does not glorify the antiviolent use of force but shows it instead to be a tragic necessity.

Parables like *The Man Who Shot Liberty Valence* illustrate the just war tradition's nuanced recognition that justice and force are not mutually incompatible. Although Augustine never wrote a systematic treatise on war, he put into play the characteristic form of moral reasoning that enters into the just war tradition. This way of thinking carves out a stance that is neither pacifist nor what is usually called "realist" or *realpolitik*.

Absolute pacifists hold that the use of force is never justifiable under any circumstances. This form of pacifism is associated with the practices of early Christians who tied their pacifism to certain ascetical norms and withdrawal from the world. Leaders charged with right authority within

organized political bodies cannot withdraw from the world, of course, and thus are never pacifists. Anyone who accepts political leadership understands that he or she may be compelled to sanction the resort to force in certain circumstances. The just war tradition limits those circumstances in part because it shares with pacifism a strong presumption against violence and force, all other things being equal.⁹ The just war tradition does not discourage acts of forgiveness and reconciliation in political life but does recognize their limits in a world of conflicting human wills, one in which the ruthless would prevail if they faced neither restraint nor the prospect of punishment.

The other alternative to the just war tradition, *realpolitik*, is a tradition even older than Christianity. *Realpolitik* severs politics from ethics. There is no room in *realpolitik* for traditional ethical concerns about how and when to resort to force; for Machiavelli, the sixteenth-century Florentine diplomat and theorist after whom this way of thinking is named, this tradition of ethical restraint was synonymous with Christianity. By contrast, Machiavelli claimed that nothing should constrain the prince, the ruler of a principality, who can deploy even brutal techniques (some of which Machiavelli vividly describes) in order to seize and keep the reins of power. Justice is not the main concern for *realpolitik*ers. Power is.

The just war thinker cannot accept the *realpolitik*ers' "anything goes" approach to political violence.¹⁰ In a landmark study that helped to revive the just war tradition in contemporary debate, Michael Walzer argues: "Our arguments and judgements shape what I want to call *the moral reality of war*—that is, all those experiences of which moral language is descriptive or within which it is necessarily employed."¹¹

To sum up, at least provisionally: For pacifists, the reigning word is *peace*. For realists, the reigning word is *power*. For just war thinkers, the reigning word is *justice*. Peace may sometimes be served by the just use of force, even as power is most certainly involved. (Power is also involved in peace politics in ways that many pacifists ignore.)

If we try to avoid the complexity of what is at issue when we debate the use of force, simplistic solutions are likely to win the day, whether of a pacifist or militarist bent. The just war tradition requires that the philosopher, the moralist, the politician, and the ordinary citizen consider a number of complex criteria when thinking about war. These criteria shape a continuous scrutiny of war that judges whether the resort

to force is justified, and whether, once force is resorted to, its use has been kept within necessary limits. Although never regarding war as desirable, or as any kind of social "good," the just war tradition acknowledges that it may be better than the alternative.

FORCE AS THE SERVANT OF JUSTICE

How is justice served by the use of force? For Augustine, a resort to force may be an obligation of loving one's neighbor, a central feature of Christian ethics. An offense that triggers a forceful response may be suffered by a third party. Suppose one country has certain knowledge that genocide will commence on a particular date and time against a group of people in another country. The group to be slaughtered has no means to defend itself. Within the just war tradition, the first country may be justified in coming to the aid of the targeted group and using force to interdict and punish their would-be attackers.

For Augustine, using force under such circumstances protects the innocent from certain harm. The historic just war tradition grappled with Augustine's statement that war may be resorted to in order to preserve or to achieve peace—and not just any peace, but a just peace that leaves the world better off than it was prior to the resort to force.¹² For early Christians like Augustine, killing to defend oneself alone was not enjoined: It is better to suffer harm than to inflict it. But the obligation of charity obliges one to move in another direction: To save the lives of others, it may be necessary to imperil and even take the lives of their tormenters. The latter response is the appropriate way, suggests the just war tradition, to meet the challenge of systematic violence. As the theologian Joseph E. Capizzi writes: "According to Augustine, nonviolence is required at the individual level and just-war is mandated at the societal level."¹³

In addition to preventing harm to the innocent, what are the other criteria that morally justify an armed response, the so-called *jus ad bellum*? First, a war must be openly declared or otherwise authorized by a legitimate authority, so as to forestall random, private, and unlimited violence. Second, a war must be a response to a specific instance of unjust

aggression perpetrated against one's own people or an innocent third party, or fought for a just cause. Third, a war must begin with the right intentions. Fourth, a war must be a last resort after other possibilities for redress and defense of the values at stake have been explored. Another *ad bellum* criterion usually noted is the prudential one: Do not enter a conflict without reflecting on whether the cause has a reasonable chance of success. One should not resort to violence lightly or experimentally.

The just war tradition has been called upon repeatedly in criticisms of holy wars, crusades, and wars of imperial aggrandizement. Just war thinking could not be put to that use if it were just another way we have of talking about a crusade. But some critics have failed to see the deep and critical distinction between just war thinking—derived as it is from a religious tradition—and any other religiously based call to arms. Consider the vast gulf that separates just war restraint from Osama bin Laden's call for an unlimited attack by all Muslims everywhere against all infidels everywhere. This is the mentality of holy war, which aspires to limitlessness: One can never kill enough infidels. For holy warriors or crusaders, the occasion for war is the simple intention to spread their gospel, whether political or religious, through violence, whenever or wherever possible, against the infidels. For just warriors, both aims and means are limited, even if one has been grievously harmed.

4

IS THE WAR AGAINST TERRORISM JUST?

HOW WELL DOES THE post-September 11 war effort fare when assessed according to the just war framework?

The resort to force—or *jus ad bellum*—stipulates certain criteria for evaluation, as outlined in chapter 3. Let's begin with the triggering event. Surely there can be little doubt in anyone's mind that the attacks of September 11 constituted an act of aggression aimed specifically at killing civilians.¹ Indeed, when a wound as grievous as that of September 11 has been inflicted on a body politic, it would be the height of irresponsibility and a dereliction of duty for public officials to fail to respond. A political ethic is an ethic of responsibility. The just war tradition is a way to exercise that responsibility with justice in mind. Such an act of terrorism aims to disrupt fundamental civic peace and tranquillity. Good is forced into hiding as we retreat behind closed doors. Preventing further harm and restoring the preconditions for civic tranquillity is a justifiable *casus belli*.

But the argument need not end there. One could go on to make the case that love of our neighbor—in this case, the Afghan people—is implicated as well. Or, less theologically, one could speak of equal regard for others based on human dignity and our common humanity. In

Afghanistan under the Taliban, one of every four children died before the age of five; life expectancy was about forty-three years; only 12 percent of the population had access to safe drinking water; and barely 30 percent of the men and only 15 percent of the women could read or write. To be sure, the Taliban took over a country already weakened by war. But rather than restoring services and helping to rebuild the social framework, they devastated it further, becoming violent depredators of their own people. The five years of Taliban rule produced nearly one million refugees, and an estimated six million Afghans, fully one-quarter of the population, were unable to find sufficient food to eat.²

"In each of the last few years," writes *New York Times* columnist Nicholas D. Kristof, "... 225,000 children died in Afghanistan before the age of 5, along with 15,000 women who died during pregnancy or childbirth. There was no way to save those lives under the Taliban; indeed, international organizations were retreating from Afghanistan even before 9/11 because of the arrests of Christian aid workers." Since the fall of the Taliban, he continues, "aid is pouring in and lives are being saved on an enormous scale. UNICEF, for example, has vaccinated 734,000 children against measles over the last two months, in a country where virtually no one had been vaccinated against disease in the previous 10 years. Because measles often led to death in Afghanistan, the vaccination campaign will save at least 35,000 children's lives each year."³ Kristof also calculated that 115,000 fewer children under the age of five will die in Afghanistan each year, and that there will be 9,600 fewer maternal deaths. Kristof's point is that military intervention that stops violence saves more civilian lives than are harmed or lost in the conflict itself. Vital human goods, such as healthy children and mothers, cannot be achieved without a minimal level of civic peace.

American forces operating in Afghanistan not only recognize this precondition but are authorized to act on it: As soon as an area is free from pervasive and random violence, troops working as civil affairs teams are paired with local officials. Their task is to reconstruct schools, rebuild hospitals, repair roads, and restore water systems. An article in the *New York Times* describes the reopening of a school that had been closed and gutted by the Taliban. An American civil affairs team paid local workers to ready the school for classes of four thousand girls, grades first through twelfth.⁴ I am not arguing that enabling Afghan girls to re-

turn to school is a sufficient reason in and of itself to deploy force. But it is clear that the restoration of a fundamental human right to education is a direct outgrowth of the U.S. response to the attacks of September 11. As a result, Afghanistan will be a more just place than if no military action had been taken.

Examining the evidence, we can see that the U.S. military response in Afghanistan clearly meets the just cause criterion of being a war fought with the right intention—to punish wrongdoers and to prevent them from murdering civilians in the future. The right authority criterion was met when both houses of the U.S. Congress authorized statutes and appropriated monies for the war effort. To this we can add the right authority enshrined in Article 51 of the United Nations Charter on self-defense. The Bush administration honored the charter's requirements by giving advance notice to the UN Security Council of its intention to use armed force to punish aggression—for the first time in anyone's living memory, as this notification requirement had become a dead letter. The Security Council, for its part, acknowledged the threat posed by Al Qaeda to the international community.

What of the criterion of last resort? Properly understood, last resort is a resort to armed force taken after deliberation rather than as an immediate reaction. The criterion of last resort does *not* compel a government to try everything else in actual fact but rather to explore other options before concluding that none seems appropriate or viable in light of the nature of the threat. What *is* one to do with the likes of bin Laden and Al Qaeda? They present no accountable, organized entity to engage—no sovereign state. They are not parties to any structure of diplomacy and thus cannot be negotiated with; in any event, because what they seek is our destruction, there is nothing to negotiate about. As Michael Quinlan, a British commentator, writes:

As we saw amid the wreck of Yugoslavia, to place military action at the very end of the line may mean invoking it only when matters have reached a desperate pass, and when its scale (with the inevitable damage) is larger than its robust use earlier might have entailed. The passage of time is moreover not neutral—if Saddam Hussein had been given longer in Kuwait, or Milosevic in Kosovo, while their mouthpieces filibustered, the delay would have furthered their malign aims.⁵

What about the prospect of success? This prudential consideration is always tricky, and in this instance I cannot pronounce with any degree of certainty that this criterion is met. Afghanistan has been successfully liberated, even though enormous difficulties lie ahead, including the continuing jostling between rival ethnic and tribal groups and the tension, as a result of military errors, between local authorities, the Afghan government, and American and coalition forces. It is important for the time being that the United States remain engaged there, as the Afghan government is urging us, so that Afghanistan does not fall back into the dismal company of failed states.

Interdicting terrorism of global reach is a tough war aim indeed, even though, and undeniably, the entire world—especially the Muslim world—will be better off if the effort is successful. It is faithful Muslims, more than any other group, who are threatened and tormented when radical Islamists and their terrorist arm hold sway.

THE LIMITS SET BY JUST WAR

Although it would be unusual for a just war to be fought in an unjustifiable manner, the tradition addresses that unhappy possibility. Unjust means may be employed even in a just wars. Take one example. There is widespread agreement—not unanimity—among just war thinkers that America's use of atomic bombs in the Pacific theater in the waning days of World War II did not pass muster under the so-called *in bello* criteria that are central to the just war tradition. How so? Because such weaponry by definition violated the most fundamental of all *in bello* requirements: noncombatant immunity. There is less agreement on whether Allied saturation bombing of German cities during World War II must be similarly criticized, if not condemned outright. Michael Walzer argues that the nature of the Nazi threat was such that this acknowledged violation of limitations on means is acceptable. I am critical of the bombing campaign.⁶

The important point for my purposes here is not to explicate the precise nature of this or any other disagreement between thinkers who otherwise agree on so much, but to note that such disagreements speak to the ethical and political debates opened up by just war thinking that

are as certainly foreclosed by the arguments of pacifism as well as by those of *realpolitik*. Pacifists condemn any resort to force outright, whether administered by a musket or a nuclear bomb, so debating justifications for a resort to force is moot. Hard-core *realpolitikers* sever ethical considerations from strategic ones, thus also shutting down debate.

Within the just war tradition, by contrast, nuances are not only possible but necessary. For example: The rhetoric of justification in debating just war versus holy war helps to lay out the boundaries of these two options tellingly. In some versions of just war thinking, refraining from slandering one's enemy is part and parcel of respecting human dignity. Minimally, the very heart of the matter lies in doing all one can to discriminate between a broad category of persons—if one's foe is a variant on a religion—and those whose version of the religion has led them into remorseless enmity against another religion or an entire people. Thus, in his speech to the nation on September 20, 2001, President George W. Bush made it clear that the war against terrorism was *not* a total war, not a holy war, not an attack on a religion.

"I want to speak tonight directly to Muslims throughout the world," the president stated.

We respect your faith. It's practiced freely by many millions of Americans, and by millions more in countries that America counts as friends. Its teachings are good and peaceful, and those who commit evil in the name of Allah blaspheme the name of Islam. The terrorists are traitors to their own faith, trying, in effect, to hijack Islam itself. The enemy of America is not our many Muslim friends; it is not our many Arab friends. Our enemy is a radical network of terrorists, and every government that supports them.⁷

Contrast this to the words of Osama bin Laden, who condemns all Americans and targets all Americans and infidels wherever they may be found as legitimate candidates for death, including children. To this one must add the *routine*, not exceptional, characterization of Jews by radical Islamism not only as infidels but as "monkeys and pigs." From official Baghdad television comes a report that America can save itself only if it ceases to be a "toy in the hands of criminal world Zionism and its accursed, freak entity, which has usurped the land of Palestine and the

land of the Arabs.” The Iraqi spokesman goes on to characterize America’s “new terrorist plans against the world” as “[serving] Zionist-Jewish greed for unlawful funds and innocent blood.”⁸

Egypt’s leading newspaper, the *Al-Abram Weekly*, which is “vetted and approved by the Egyptian government,” also reported that: “A compilation of the ‘investigative’ work of four reporters on Jewish control of the world states that Jews have become the political decision-makers and control the media in most capitals of the world (Washington, Paris, London, Berlin, Athens, Ankara) and says that the main apparatus for the Jews to control the world is the international Jewish lobby which works for Israel.”⁹ All-out slaughter of one’s opponents is made easier if one dehumanizes them, as happens when Jews are simultaneously depicted as subhuman (monkeys and pigs) and superhuman (they run everything and engineered the September 11 attacks themselves because they are diabolically, almost inhumanly, clever).

In an interview with Sheik Muhammad Gemeaha, who was the representative in the United States “of the prominent Cairo center of Islamic learning, al-Azhar University, but also imam of the Islamic Cultural Center of New York,” the sheik stated that “‘only the Jews’ were capable of destroying the World Trade Center and added that ‘if it became known to the American people, they would have done to the Jews what Hitler did.’”¹⁰ Such rhetoric, which invites indiscriminate slaughter of all Jews, all Americans, all infidels, is routine, not exceptional, among radical Islamists. By contrast, President Bush and other responsible American officials embodying right authority have singled out for censure only terrorists acting in the name of a radical ideology that also targets moderate Muslims for threat, assault, and death. These same officials praise faithful Muslims and honor their religion as one of the great world faiths. It is tendentious and wildly distorting to equate this approach of distinction with one that issues vicious blanket condemnations of all Americans, all infidels, all Jews, and all Muslims who are unfaithful in the eyes of bin Laden and other radicals.

I was a principal author and signatory of the statement “What We’re Fighting For,” in which sixty academics and intellectuals evoked the just war tradition explicitly and called for friendship between Americans and “our brothers and sisters in Muslim societies.” Modeling our rhetoric af-

ter Abraham Lincoln’s great Second Inaugural, we made the “forthright” statement: “We are not enemies, but friends. We must not be enemies. We have so much in common. There is so much that we must do together. Your human dignity, no less than ours—is what we believe we’re fighting for. We know that, for some of you, mistrust of us is high, and we know that we Americans are partly responsible for that mistrust. But we must not be enemies.” Our attempt to evoke commonalities and open a dialogue flowed directly from the statement’s reliance on the just war tradition as the conceptual framework for explaining not only why we fight but how we fight. We must never lose the language of justice, for it reminds us of what is at stake and of the importance of keeping justice itself alive in how we fight.

JUST AND UNJUST MEANS

The two key *in bello* requirements are *proportionality* and *discrimination*. Proportionality refers to the need to use the level of force commensurate with the nature of the threat. If a nation faces a threat from a small, renegade band carrying out indiscriminate assassinations, it does not call in a tactical nuclear strike; rather, it puts a mobile unit in the field to track down this band and stop them. Discrimination refers to the need to differentiate between combatants and noncombatants. Noncombatants historically have been women, children, the aged and infirm, all unarmed persons going about their daily lives, and prisoners of war who have been disarmed by definition.

Knowingly and intentionally placing noncombatants in jeopardy and putting in place strategies that bring the greatest suffering and harm to noncombatants rather than to combatants is unacceptable on just war grounds.¹¹ According to just war thinking, it is better to risk the lives of one’s own combatants than those of enemy noncombatants. In the case of U.S. military strikes in Afghanistan, of course, the noncombatants were not foes because they too had been victims of Al Qaeda and the Taliban. Even as U.S. forces attempted to strike only legitimate war targets, however, the campaign in Afghanistan renewed an old debate about what constitutes a legitimate war target.

Legitimate war targets may vary from conflict to conflict depending on what is deemed essential to the war effort of one's opponents. It is always suspect to destroy the infrastructure of civilian life. People should not be deprived of drinking water, for example. In the early formulations of the principle of proportionality, it was stipulated that wells from which persons and animals drink are never to be poisoned.

Although civilian casualties should be avoided if at all possible, they occur in every war. Inevitably, civilians fall in harm's way because a shell or bomb goes astray and misses its primary target or because war fighters are given faulty intelligence about where combatants are hidden, whether intentionally or unintentionally. The question of "collateral damage" should never be taken lightly. That the United States takes this matter very seriously indeed was noted in chapter 1. Every incident in which civilian lives are lost is investigated and invokes a reevaluation of tactics in an attempt to prevent such incidents in the future. The First Geneva Protocol of 1977, additional to the Geneva Conventions of August 12, 1949, relating to the Protection of Victims of International Armed Conflicts, codified basic just war norms on civilian and nonmilitary targeting, building these into the interstices of international norms on warmaking.

The demands of proportionality and discrimination are strenuous and cannot be alternately satisfied or ignored, depending on whether they serve one's war aims. The norms require that a war-fighting country ask itself critical questions about each criterion. The United States knows that it must try to answer these questions about its war on terrorism, even with all the difficulties attendant upon separating combatants from noncombatants when fighting a shadowy entity that is not a state actor and has neither *de jure* nor *de facto* accountability to any wider international community.

During and after a conflict, those animated by the just war tradition assess the conduct of a war-fighting nation by how its warriors conducted themselves. Did they rape and pillage? Were they operating under careful rules of engagement? Did they make every attempt to limit civilian casualties, knowing that, in time of war, civilians are invariably going to fall in harm's way? It is unworthy of the solemn nature of these questions to respond cynically or naively.

Since the Vietnam War and the restructuring of the U.S. military, those who train U.S. soldiers have taken pains to underscore the codes

of ethics that derive from the just war tradition. No institution in America pays more attention to ethical restraint on the use of force than does the U.S. military. Thus, we do not threaten to kill and target explicitly three thousand civilians because that number of our own civilians were intentionally slaughtered. The soldier, by contrast to the terrorist, searches out and punishes those responsible for planning, aiding and abetting, and perpetrating the attacks, the act of aggression that served as the trigger for going to war. Preventing future attacks is a critical motivation. Just punishment, which observes restraints, is different from revenge, which knows no limits.

Have *in bello* criteria been met in the U.S. war on terrorism? On the rule of discrimination, it is clear that every effort is being made to separate combatants from noncombatants, and that targeting civilians has been ruled out as an explicit war-fighting strategy. As the author and war historian Caleb Carr puts it: "Warfare against civilians must never get answered in kind. For as failed a tactic as such warfare has been, reprisals similarly directed at civilians have been even more so—particularly when they have exceeded the original assault in scope. . . . Terror must never be answered with terror; but war can *only* be answered with war, and it is incumbent on us to devise a style of war more imaginative, more decisive, and yet more humane than anything terrorists can contrive."¹² What the terrorists are planning, if they can acquire effective biological, chemical, and nuclear weapons, are attacks on civilians. What we are planning is to interdict their plans: to stop them without resorting to their methods.

The improved accuracy of the U.S. air war, conducted with weaponry that is more precise and does less damage to the surround than was possible only a few years ago, serves the ends of discrimination. A senior navy officer, quoted by the *New York Times*, observed that: "With precision-guided weapons, you don't have to use as many bombs to achieve the desired effects, and using fewer weapons reduces the risk of collateral damage."¹³ It is difficult to assess civilian casualties in a war theater, particularly in the patchwork that is Afghanistan, where different areas are under at least partial control of contesting tribal leaders (some of whom may have called in U.S. strikes against the Taliban when they were in fact trying to kill their own ethnic or tribal rivals, and this on more than one occasion). But attempts to come up with an accurate estimate of civilian deaths in Afghanistan have been made by human rights groups, the U.S.

military, and the *Los Angeles Times*. As of July 3, 2002, the consensus was that Afghan civilian casualties numbered between 1,000 and 2,000.¹⁴ The *Los Angeles Times* reviewed more than 2,000 news stories covering 194 incidents. Their count was between 1,067 and 1,201. Relief officials of the Afghan government gave the same figures.

The *Los Angeles Times* concluded that the numbers suggest a very low casualty rate compared with earlier Afghan conflicts. In the early battles between competing Afghan warlords, an estimated 50,000 civilians were killed, according to the International Committee of the Red Cross. Soviet air raids in March 1979 killed 20,000 civilians in a few days in the western city of Herat—just a fraction of the estimated 670,000 civilians who died during the ten-year Soviet occupation. In the current conflict, Afghans themselves report that the big problem is not the accuracy of U.S. weaponry but flawed intelligence.

For example, before it fell, the Taliban put out false information about U.S. warplanes hitting a hospital in central Kabul. “Lies—all lies,” said Ghulam Hussain, an emergency room nurse who said he was on duty that night. “Not a single person in this hospital was hurt. No rockets, no bombs, no missiles. Not even a window was broken.”¹⁵ The president of the Afghan Red Crescent (the Islamic equivalent of the Red Cross), a foe of the Taliban, is quoted as saying: “The Taliban propaganda created a huge distortion in the outside world, especially early in the war. . . . Civilians were killed, of course, but not nearly as many as the Taliban said, or in the way they said. . . . The Americans were careful and their bombs were very accurate. They checked to see for sure that they were targeting Taliban or al-Qaida bases or convoys. The people who died—it was accidental, not deliberate.”¹⁶

To signal the serious nature of mistaken bombings in which civilians are harmed, Deputy Defense Secretary Paul D. Wolfowitz visited Afghanistan in July 2002 to explore recent incidents and to insist that these incidents be fully investigated.¹⁷ The *New York Times* reported the results of an investigation in which on-site reviews were conducted of eleven locations where airstrikes had killed an estimated four hundred civilians. These reviews “suggest that American commanders have sometimes relied on mistaken information from local Afghans.” Another factor was an understandable preference to use airstrikes with precision, high-tech weaponry rather than to put more soldiers in harm’s

way. American military commanders reiterated that “they take pains to ensure that civilians are spared, often verifying their targets with several sources of information. In many of the cases . . . they insist that they struck valid military targets.”¹⁸ The investigation concluded that too many men in the field had been given cell phones to call in intelligence; not all of them shared the interest of the coalition fighting terrorism in trying to uproot the last of the Al Qaeda–Taliban nexus.

The *New York Times* report also suggested that there might be a pattern in the U.S. military of overreliance on air power. During the Kosovo war, I criticized the Clinton administration for its stated zero-casualty policy. In that conflict, we aimed to sacrifice Serbian civilians rather than risk the life of a single American soldier. Such a policy is not acceptable on just war grounds. To his credit, President Bush warned from the beginning that American lives would be at risk and some would be lost. That commitment must always be carried through on the battlefield in order to protect civilians as thoroughly as possible in a theater of modern war.

The United States must do everything it can to minimize civilian deaths—and it is doing so. The United States must express remorse for every civilian death in a way that is not simply rote—and it is doing so. The United States must investigate every incident in which civilians are killed—and it is doing so. The United States must make some sort of recompense for unintended civilian casualties, and it may be making plans to do so—an unusual, even unheard of, act in wartime.

Finally, what about proportionality? Proportionality is a daunting challenge in the fight against terrorism. As the British analyst Clifford Longley writes: “Proportionality is a central concept of conventional just war theory. Under the principle of double effect, for instance, it may be justified to shell or bomb an enemy position even though there may be civilian casualties as a result. But shooting off rounds of ammunition that unintentionally kill civilians would not be justified simply to demonstrate . . . that the gunners are keen and up to scratch.”¹⁹ Terrorism aims to kill as many civilians as possible. Terrorists do not assess casualties against traditional war aims: The war aim is the death of civilians and the terrorizing of living civilians. How do we develop a proportional response to a disproportionate intended threat?

We begin by being clear about what we cannot do. We cannot use biochemical, biological, or counter-population nuclear weapons against

civilians just because our enemies are setting about doing it. We cannot knowingly target any number of civilians because our opponents are doing it. We can attempt to interdict, disarm, and demolish training camps, weapons stashes, and active combatants, and we can deploy the weapons appropriate to that purpose.

It is fair to say that in Afghanistan the U.S. military is doing its best to respond proportionately. If it were not, the infrastructure of civilian life in that country would have been devastated completely, and it is not. Instead, schools are opening, women are returning to work, movie theaters are filled to capacity, and people can once again listen to music and dance at weddings. This observation is not intended to minimize the suffering and grief that has occurred in too many places, some of it the result of American mistakes in the war effort. But the restoration of a basic structure of civilian rule and a functioning state is a great benefit. We must stay engaged to this peaceful end.

• • •

The just war tradition of moral argument affords criteria for determining whether a resort to force is justified. Just war thinking provides guidance as to how a war should be fought and offers a framework of deliberation, evaluation, criticism, and moral challenge. Particularly useful is the tough-minded moral and political realism of just war thinking—not a Machiavellian “anything goes” realism, but an Augustinian realism that resists sentimentalism and insists on ethical restraint. Estrangement, conflict, and tragedy are constant features of the human condition, and just war thinking laced with Augustinian realism offers no assurances that we can ever make the world entirely safe. Augustinianism is skeptical about the exercise of power even as it recognizes the inescapability of power. Augustinian realists are not crusaders, but they do insist that we are called upon to act in a mode of realistic hope with a hardheaded recognition of the limits to action. You do not yourself have to be an Augustinian to recognize the abiding truths and strengths of this position.

Why, and how, have so many in our intellectual and religious life abandoned any such tradition or framework? That question will occupy us in the next four chapters.

5

THE ACADEMY RESPONDS TO TERROR

SOMEWHERE ALONG THE LINE, the idea took hold that, to be an intellectual, you have to be *against* it, whatever *it* is. The intellectual is a negator. Affirmation is not in his or her vocabulary. It was not always so. Throughout the World War II era, when the stakes were high, American intellectuals signed on for the war effort. Our foreign policy enjoyed bipartisan support: As everyone fought fascism, liberal, conservative, moderate, even radical intellectuals and academics found common ground without fearing that they would be accused of betraying a lofty stance of dissent. Unfortunately, signing on to fight Stalinism would have been a different thing. Many on the left were reluctant to face the truth about the Soviet Union: The body count numbering in the millions was even higher than the Nazis had managed. (Sadly, left-wing denial has resurfaced in the wake of 9/11, as we shall see.)

During the Cold War era, the bipartisan consensus held, but pre-World War II divisions come to the fore again. The hard left broke into sectarian factions. The anti-anti-Communists, aided and abetted by the hyperbole of professional anti-Communists, displayed a naivete about anything that paraded under the name “socialism” and continued (to insist that the Soviet Union was no threat.) The anti-anti-Communists were primarily opposed

it is
1998