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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 First 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.