

INTERVENTION, JUST WAR, AND U.S. NATIONAL SECURITY

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[Both the Bush administration's national security strategy and the war with Iraq have provoked wide-ranging reaction and comment. Questions of how to assess the Bush doctrine and/or the Iraqi conflict provoke a reconsideration of the just war tradition. New grounds for just cause are being proposed as well as developments in other areas of just war thinking, including proposals for an entirely new set of criteria, a jus post bellum.]

ON MARCH 19, 2003, the United States launched an aerial bombardment of designated sites in Baghdad, Iraq. It was the initial attack in a war that had been long expected and widely debated. Months earlier, on September 17, 2002, the Bush administration had issued *The National Security Strategy of the United States (NSS)* a document that announced substantive shifts in American policy. On December 11, 2002, there followed the release of an unclassified version of the *National Strategy to Combat Weapons of Mass Destruction*.¹ Both of these documents caused controversy, not only because of their evident connection with the looming war against Iraq, but also because they formally articulated the “Bush doctrine” of how to address the problem of weapons of mass destruction.²

Years ago John Courtney Murray maintained that Pope Pius XII had

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¹ George W. Bush, *The National Security Strategy of the United States* (Washington: The White House, 2002); George W. Bush, *National Strategy to Combat Weapons of Mass Destruction* (Washington: The White House, 2002). Both documents are available in PDF format on the White House website: <http://www.whitehouse.gov/response/index.html> (downloaded October 31, 2003).

² Doctrine is not being used here in any technical sense. In foreign policy circles the term merely refers to a stated policy that provides a general aim or goal for action. The “Bush doctrine” concerns the willingness to initiate armed force in order to avoid the spread of weapons of mass destruction

reduced the just cause for war to one category, defensive war to resist aggression.³ That view was widely accepted among just war theorists. While definitions of aggression might be debated, the basic premise that a just war was a war of defense became the normative standard in Catholic thinking. The dangers of nuclear war made such a stance only firmer. That narrow rendering of just cause has now been revised. Other aspects of the just war tradition have also been subject to reconsideration.

This section of the “Notes on Moral Theology” discusses several issues that have arisen in the course of the ethical debate over the decision of the United States to wage war against Iraq.⁴ Those issues will be treated under two headings: (1) the expansion of grounds for armed intervention, and (2) proposed revisions of just war theory.

ARMED INTERVENTION AND JUST CAUSE

The Treaty of Westphalia in 1648 brought to a close Europe’s Thirty Years War and set in motion the system of nation-states and modern international law. Primary in importance for the newly developing political system was the recognition of sovereignty, the belief that a ruler had the right to exercise authority within a defined territory without deference to any other person claiming superior authority. A second crucial element of the new order was nonintervention, barring coercive interference by outsiders in the internal affairs of a state. A third part of the “Westphalian synthesis,”⁵ was the removal of religion from the realm of international politics. The religion of the prince and his people was no longer to be a factor in calculations about war.

While the norm of nonintervention has been violated many times, it did represent an advance over the reigning ethos prior to Westphalia. Gradual establishment of nonintervention as a norm brought a measure of stability to the embryonic system of nation-states.

In the present age new arguments for intervention have been forthcoming. During the 1990s there were calls for sending troops into countries where a humanitarian crisis was occurring. The upshot of the political debate that followed was widespread acceptance that genocide warrants

³ John Courtney Murray, *We Hold These Truths* (Garden City, N.Y.: Doubleday Image, 1964) 245. The original 1960 version of Murray’s work was published by Sheed and Ward.

⁴ For a review of literature occasioned by the first war with Iraq, see John Langan, “The Just-War Theory after the Gulf War,” *Theological Studies* 53 (1992) 95–112.

⁵ The expression is taken from Daniel Philpott, “The Challenge of September 11 to Secularism in International Politics,” *World Politics* 55 (October 2002) 66–95, at 71.

intervention and a good deal of backing also can be found for intervention to stop ethnic cleansing and restore civil order within failed states.⁶

Terrorism and Armed Intervention

Another argument for intervention has arisen today as a result of terrorist attacks in the United States and elsewhere. America's military invasion of Afghanistan raised the question whether the United States ought to have viewed the campaign against terrorism through the lens of warfare or criminal activity. Certainly much of the war on terrorism resembles activity similar to police work: intelligence gathering, interdiction of materials and funding, detection leading to arrest, and prosecution of individuals. But the attack on U.S. soil by members of al Qaeda, the continuing threat that it posed, and the unwillingness or inability of the Taliban regime to halt terrorist activity initiated within Afghanistan's borders, made a military attack on al Qaeda and the Taliban rulers a reasonable decision. Whether that mode of action will be the wisest course as the struggle against terrorism moves beyond the earliest stages is another matter.

Of interest here is how the Bush administration presented its case for the attack on Afghanistan. Several legal and moral arguments were available. The United States might have argued that it was acting at the behest of the Northern Alliance, casting it as the legitimate government of that distressed nation. Alternatively, the United States could have sought formal authorization from the U.N. Security Council, something that surely would have been given. Or, basing its actions on the precedent set in Kosovo in 1999, America might have performed a unilateral humanitarian action to save millions of Afghans from the risk of famine during the winter of 2001–2002. Instead, the United States chose a different justification for its use of force, one that had been formulated during the Reagan presidency and criticized by many of our allies at the time.

In 1986 the United States bombed Libya after the terrorist bombing of a Berlin nightclub popular with U.S. military personnel stationed in Germany. The Reagan administration, following the argument of Secretary of

⁶ For a review of the literature from the early nineties, see my article "The Morality of Humanitarian Intervention," *Theological Studies* 55 (1994) 82–105. Helpful and more recent writings include Pierre Laberge, "Humanitarian Intervention: Three Ethical Positions," *Ethics and International Affairs* 9 (1995) 15–35; Terry Nardin, "The Moral Basis of Humanitarian Intervention," *Ethics and International Affairs* 16 (2002) 57–70; J. Bryan Hehir, "Intervention: From Theories to Cases," *Ethics and International Affairs* 9 (1995) 1–13, and "The Moral Measurement of War: A Tradition of Change and Continuity," in *The Sacred and the Sovereign: Religion and International Politics*, ed John D. Carlson and Erick C. Owens (Washington: Georgetown University, 2003) 41–65.

State George P. Shultz, cited the right to use force in self-defense against state sponsors of terrorism, accusing Libya of being a “rogue state.”⁷ Many NATO allies criticized the rationale.

After the attacks of September 11, 2001, other nations were more willing to endorse the U.S. claim about a right to attack a state that sponsors terrorism. An important distinction was drawn between the U.S. argument that an attack on Afghan soil was legitimate because of the Taliban’s close and supportive relationship with al Qaeda and the more extended, still unacceptable claim, that one nation could launch an attack within another nation’s sovereign territory, even if there was no state support for terrorists acting within the borders.⁸

When compelling evidence is present that a particular state has intentionally supported global terrorism and continues to do so, the case can be made for armed force to avoid future terrorist attacks within the framework of the just war tradition. A state intimately linked to support of terrorism against another nation is really engaged in a war of aggression by proxy. Any country that is the object of terrorist attacks has a right to defend itself. In effect, the case against the Taliban was not intervention for regime change but a war of self-defense against a government that was directly complicit in terrorist attacks.

Intervention and Counterproliferation

In this first decade of the 21st century, another rationale for intervention is developing. President Bush and his advisors have presented a case for armed intervention in order to stop the proliferation of weapons of mass destruction. Concern that enemies might use such weapons has fueled the new debate. The United States has declared its willingness to initiate attacks upon adversaries it considers to be threatening.⁹

Although the administration has stated that its policy “is not to use force in all cases to preempt emerging threats,”¹⁰ it is possible to interpret the war with Iraq as a decisive turn in national security policy. Without pre-

⁷ The present Bush administration uses the term to describe those states that abuse their own citizens, violate international laws, seek to acquire weapons of mass destruction, sponsor terrorism and hate the U.S. (Bush, *NSS* 14).

⁸ The above analysis draws upon Michael Byers, “Letting the Exception Prove the Rule,” *Ethics and International Affairs* 17 (2003) 9–16.

⁹ “The United States has long maintained the option of preemptive actions to counter a sufficient threat to our national security. The greater the threat, the greater is the risk of inaction – and the more compelling the case for taking anticipatory action to defend ourselves, even if uncertainty remains as to the time and place of the enemy’s attack. To forestall or prevent such hostile acts by our adversaries, the United States will, if necessary, act preemptively” (Bush, *NSS* 15).

¹⁰ *NSS* 15.

judging future cases, there are concerns, in the wake of the Iraqi conflict, about the general position staked out in the *NSS*.

First, there is the matter of setting the trip wire at the right place. Is simple capability, the possession of weapons of mass destruction, or the infrastructure to produce them, a satisfactory reason to go to war? Suspicion or fear about another's intentions is not adequate.¹¹ The standard must be more rigorous than that. If fear can serve as a justification for assault then the possibilities for attack become near limitless. Strategists can devise countless scenarios that evoke fear of an enemy but such imaginative exercises cannot legitimate a call to arms.

Second, the uncertainty of assessing threats has been underlined by the aftermath of the Iraqi war. While the conclusive judgment about Iraq's weapons of mass destruction cannot be made at the time this review is being written, it appears U.S. intelligence overestimated the immediate threat that Iraq posed.¹² Initial investigations into the decision-making process indicate some sectors of the intelligence community had doubts about the U.S. brief against Iraq but policy makers chose to ignore evidence that did not suit their desired conclusions. It may be that the temptation to "politicize" intelligence was not successfully resisted.¹³

A third concern is the very definition of threat. Clearly, the policy pro-

¹¹ As international lawyer Ruth Wedgwood, an advisor to the State Department, puts it: "pure capability is not a sufficient *casus belli*. And pure capability with a smarmy attitude is not *casus belli*" ("Six Degrees of Preemption," *Washington Post*, 29 September 2002, B2).

¹² Besides the apparent lack of an imminent threat from Iraqi weapons of mass destruction there is the further complication that even if Iraq had weapons of mass destruction in its possession it cannot be presumed that they were meant to threaten the U.S or its allies. Rolf Ekeus, former executive chairman of the United Nations Special Commission on Iraq (UNSCOM) has pointed out that "all four components [chemical, biological, and nuclear weapons as well as missile development] of Iraq's prohibited and secret weapons of mass destruction program were motivated and inspired by its structural enmity and rivalry with Iran" ("Iraq's Real Weapons Threat," *Washington Post*, 29 June 2003, B7). Ekeus, who supported the removal of Hussein from power, has argued that the real aim of Iraq's desire for weapons of mass destruction was to deter or, if necessary, defeat Iran in a future war, not threaten the U.S. nor assist terrorists. He believes that at least 95% of Iraq's arsenal of weapons of mass destruction had been destroyed by UNSCOM prior to 1997. The Iraqis were not trying to store weapons of mass destruction that had a limited shelf-life, but were working to develop the capability for rapid production and deployment of weapons of mass destruction in battlefield conditions against the Iranians.

¹³ An informative narrative of how the Bush administration treated the intelligence community is Barton Gellman and Walter Pincus, "Depiction of Threat Outgrew Supporting Evidence," *Washington Post*, 10 August 2003, A1. For comment about the risk of misusing intelligence, see Patrick Lang, "Speaking Truth to Power," *America* 188 (August 4-11, 2003) 18-19; Bruce Berkowitz, "The Big Dif-

posed in the *NSS* is not aimed at all states possessing weapons of mass destruction but only those that are deemed to be a threat.¹⁴ When invoking self-defense against a threat, it is important to have a reasonable definition of the self; otherwise too many things can be defined as threatening. Neta Crawford, a political scientist at Brown University, has warned that the “self” can be understood so broadly that self-defense may wind up looking like aggression.¹⁵ For example, the Department of Defense has defined the “enduring national interests” of the United States as including factors that contribute to economic well-being, the vitality of the global economy, and ongoing access to key markets and resources. Further, the aim of U.S. policy is to maintain preeminence over all other nations.¹⁶ When the nation’s self-interest is viewed so broadly, almost any adverse circumstance can be characterized as a threat and enemies can be found in abundance. One must be wary of letting imperial ambitions shape the definition of threat.

A fourth factor when weighing warfare as a method of counterproliferation is the possibility of alternatives to a military assault. It is an error in judgment to focus the effort on counterproliferation at the end of the process of acquiring weapons of mass destruction. It would be much better instead to start early by discouraging nations from seeking weapons of mass destruction. According to critics the present administration has undercut its struggle against proliferation by a lack of commitment to a variety of nonproliferation strategies.¹⁷

ference Between Intelligence and Evidence,” *Washington Post*, 2 February 2003, B1; Jay Taylor, “When Intelligence Reports Become Political Tools . . .” *Washington Post*, 29 June 2003, B2; Carl Hulse and David Sanger, “New Criticism on Prewar Use of Intelligence,” *New York Times*, 29 September 2003, A1.

¹⁴ Take the example of the president’s so-called “axis of evil.” Iran has sponsored terrorism. Although it has indicated a willingness to abide by international norms for use of nuclear materials, there is no certainty that Iran does not possess biological and chemical weapons, or at least the capability of developing them. Yet, there is substantial opposition to any U.S. attack on Iran, even from the strongest U.S. ally in the Iraq war, Great Britain. See the essay by Geoffrey Kemp, “Stopping the Iranian Bomb,” *The National Interest* 72 (2003) 48–58.

North Korea, the third member of the alleged “axis of evil,” is a less stable situation but the military and political realities of the Korean peninsula, not to mention Chinese and Japanese interests in the region, make a U.S. military attack far more difficult than in the case of Iraq.

¹⁵ Neta Crawford, “The Slippery Slope to Preventive War,” *Ethics and International Affairs* 17 (2003) 30–36.

¹⁶ Department of Defense, *Quadrennial Defense Review* (Washington: U. S. Government Printing Office, 2001) 2, 30, 62 as cited in Crawford, “The Slippery Slope” 32.

¹⁷ Maryann Cusimano Love, “Real Prevention: Alternatives to Force,” *America* 188 (January 20–27, 2003) 12–14.

Despite all these concerns the argument for war as a means of counter-proliferation is unlikely to go away. For one thing the danger of weapons of mass destruction proliferation is high and it was the argument that members of the Bush administration selected to make the case for war to the American public. After the war more emphasis was given to other explanations of what constituted just cause.¹⁸ Certainly, a major point of dispute prior to the war was the legitimacy of war to prevent the spread of weapons of mass destruction. President Bush advanced the argument that global terrorism and the existence of “rogue states” changed the context for evaluating preemptive attacks.¹⁹

This claim is an important one for there has been confusion over just what was the proper formulation of the Bush doctrine—was it best understood as preemption or prevention?

Preemption is a strategy that has received support, though not unanimously, from theorists within the just war tradition. In a bygone era it was understood that a raiding party from a settlement might be sent out to surprise an enemy setting up camp for a planned attack the next day. Preemption was not viewed as aggression when it was in reaction to an enemy who had already indicated hostile intent and whose behavior threatened imminent attack.

In more modern times the case of the 1837 Canadian attack on the American steamboat *Caroline* led to Daniel Webster’s explanation of what constitutes legitimate preemption or anticipatory self-defense.²⁰ In a

¹⁸ One of the criticisms made against the Bush administration was that the precise reason for going to war shifted several times. John Langan noted that the main aim of the war “wobbled” between disarmament and regime change (“Bush’s ‘Iraq Project,’” *Commonweal* 130 [March 14, 2003] 15, 18–19, at 15); E. J. Dionne wondered which war was the U.S. being asked to fight: disarm Iraq of weapons of mass destruction? remove Hussein from power? bring democracy to Iraq and transform the region? (“But Which War?” *Washington Post*, 31 January 2003, A27). See also John Langan, “Should We Attack Iraq?” *America* 187 (Sept. 9, 2002) 7–10.

¹⁹ “For centuries, international law recognized that nations need not suffer an attack before they can lawfully take action to defend themselves against forces that present an imminent danger of attack. Legal scholars and international jurists often conditioned the legitimacy of preemption on the existence of an imminent threat . . . We must adapt the concept of imminent threat to the capabilities and objectives of today’s adversaries” (Bush, *NSS* 15).

²⁰ The *Caroline* Affair involved a foolish attempt by a handful of Americans eager to assist a group of Canadian insurgents who were trying to foment revolution against England. The Americans leased the steamboat *Caroline* to bring material aid to the insurgents. While the vessel was moored on the American side of the Niagara River, Canadian loyalists seized the boat and burned it. One American was killed. The dispute that ensued dragged on for five years. In the course of diplomatic exchanges seeking to resolve the matter, Webster, as Secretary of State, argued that a preemptive attack is justified only by “a necessity of self-defence,

phrase, preemption was only permissible in response to a threat that was clear, substantial, and imminent.²¹ Properly understood, preemption is an extension of the right of self-defense, albeit anticipatory defense.

Preventive war is different. Preventive war is meant to avoid some eventual or possible outcome that a state views as undesirable. It is an attack launched in response to a future (and uncertain) threat. Preventive war leads to a focus on capability not intent. The result is a cycle of escalation as mutual fear of attack puts all parties on edge. History teaches that preventive war can create wars that otherwise would not happen for instability is endemic to policies of war initiation based on fear of an uncertain threat.²² A substantial part of the criticism of the U.S. attack on Iraq was that it was not a preemptive response to an imminent danger but a war of prevention that was unnecessary.

Regardless of the Iraqi conflict, the issue of armed force as a means of countering the proliferation of weapons of mass destruction had been moving to the forefront of policy debate. In the case of North Korea, the growing risk had led the Clinton administration to consider the argument for military counterproliferation.²³ In that sense the new *NSS* is not novel, though it moves more decisively toward a posture of preventive war to eliminate weapons of mass destruction.

What shifted the Bush administration toward greater reliance upon military action is the fear that weapons of mass destruction will fall into the hands of terrorists or their state-sponsors who cannot be checked by the same means that were used in the past. Deterrence and diplomacy are no longer deemed effective in such cases. Efforts at nonproliferation through these methods must now give way because of the new urgency created by terrorists and “rogue states” considered a threat to national security.

Does the spread of weapons of mass destruction of itself constitute a legitimate threat? Can armed intervention be used to stop proliferation of

instant, overwhelming, leaving no choice of means, and no moment for deliberation.” See Webster’s letter of July 27, 1842 to the British foreign minister Lord Ashburton. Available at http://www.danorr.com/webster/webster_july27_1842.html (downloaded October 27, 2003).

²¹ Michael Walzer treats the case of the Israeli surprise attack on Egypt’s air force at the start of the Six Day War as another illustration of the just war tradition’s willingness to countenance the legitimacy of preemption. See *Just and Unjust Wars* (New York: Basic Books, 1977) 82–85.

²² See Richard Betts, “Striking First: A History of Thankfully Lost Opportunities,” *Ethics and International Affairs* 17 (2003) 17–24, and Crawford, “The Slippery Slope.”

²³ The Clinton position can be found in the “Bottom Up Review” of our defense policies conducted in 1993 by the late Les Aspin when he was Secretary of Defense. A copy of that review is available through the website of the Federation of American Scientists: <http://www.fas.org/man/docs/bur/> (downloaded October 31, 2003).

weapons of mass destruction? If so, under what conditions? Ever since the devastation of World War I there have been efforts to narrow the case for war. State sovereignty stood as a useful norm discouraging the urge to meddle in the internal affairs of states as a just cause. Humanitarian intervention has become a standard challenge to the idea of sovereignty as absolute. The Bush doctrine presents another challenge, intervention employed for counterproliferation.

What the challenges of humanitarian action and counterproliferation demonstrate is the need to develop a general theory of armed intervention. We must re-consider the meaning of sovereignty and the proper nature of exceptions to the norm. In a series of splendid essays Bryan Hehir has outlined an initial framework for thinking about the morality of intervention.²⁴

Sovereignty is being recast but it is unwise to dismiss the importance of a norm that has put a brake on the temptation to war. Intervention is more difficult to restrain than war since the just cause is not clear aggression. When the list of exceptions to nonintervention grows then it becomes all the more important to raise up other criteria of just war theory. For Hehir, proper authority for intervention must be multilateral, if not through the U.N. Security Council then via some regional authorization. A loose “coalition of the willing” falls short of the kind of multilateral authorization envisioned.

Secondly, if we are prepared to support new forms of intervention under a revised *jus ad bellum* it behooves us to require that *jus in bello* criteria are carefully observed in planning and carrying out an intervention. Proportionate and discriminate use of force appears all the more important in an age when there is an expanded set of circumstances that permit armed force. Certainly, the use of nuclear weapons should be ruled out as unduly provocative when coupled with a controversial argument for preventive war.

In the end, Hehir believes there is “a marginal possibility” for armed

²⁴ What follows is my summation of Hehir’s position drawn from a number of sources. In addition to the essays cited above in n. 6, see J. Bryan Hehir, “Expanding Intervention, Peril or Promise,” *Social Research* 62 (Spring, 1995) 41–52; “Military Intervention and National Sovereignty: Recasting the Relationship,” in *Hard Choices: Moral Dilemmas in Humanitarian Intervention*, ed. Jonathan Moore (Lanham, Md.: Rowman and Littlefield, 1998) 29–54; “The New National Security Strategy,” *America* 188 (April 7, 2003) 8–12; “Faith, Morals and Foreign Policy” in *Liberty and Power: A Dialogue on Religion and U.S. Foreign Policy in an Unjust World*, ed. E.J. Dionne, Jr., Jean Bethke Elshtain, Kayla M. Drogoz. The Pew Forum Dialogues on Religion and Public Life, vol. 3 (Washington: Brookings Institution, forthcoming); “Moral Principles in the Midst of Political Change” Public Lecture at the Woodrow Wilson School of Public and International Affairs, Princeton University (April 25, 2003). It is available through the school’s website: <http://www.wws.princeton.edu/pcpia/HehirRemarks.pdf> (downloaded October 31, 2003).

intervention to counter weapons of mass destruction in those situations where there is clear evidence that a state has hostile and aggressive intentions coupled with overwhelming evidence that weapons of mass destruction are being developed. The great danger, however, is that even this “marginal possibility” will make resort to war more frequent.²⁵

When the Council Fathers assembled at Vatican II they declared that it was imperative to evaluate “war with an entirely new attitude.”²⁶ It was nuclear weapons that led to the conciliar call for rethinking modern war. Today, nuclear weapons are still with us, but now grouped with biological and chemical weapons, under the heading of weapons of mass destruction. The presence of these weapons continues to shape just war thinking but, as suggested above, three additional topics have also influenced the re-evaluation of war—humanitarian intervention, terrorism, and the proliferation of weapons of mass destruction. The result is that the argument for what constitutes just cause has moved beyond self-defense.

RETHINKING JUST WAR THEORY

In addition to the debate over just cause, a variety of proposals have been offered for revised formulations of just war teaching in response to recent world events. This is to be expected for, as Michael Quinlan observed, the teaching on just war “is not a fixed deposit founded upon scriptural text or papal pronouncement” but is the fruit of “reflection on the interplay between moral values and the harsh realities of a turbulent world.” Just war thinking must be “open to development as those realities shift.”²⁷

A Presumption against War?

Drew Christiansen has suggested that after Vatican II the evolution of Catholic thinking about war has been deeply influenced by incorporation of themes related to the tradition of nonviolence.²⁸ This departs from an earlier period when the just war tradition alone informed Catholic teaching. This helps to explain why there has developed in recent decades the conviction that the initial presumption of Catholic teaching is opposition to war.

Two prominent Catholic authors, Michael Novak and George Weigel,

²⁵ Hehir, “Faith, Morals and Foreign Policy.” I am quoting from the typed manuscript that the author graciously provided.

²⁶ Vatican II, *Gaudium et spes* no. 80.

²⁷ Michael Quinlan, “Don’t Give Up on the Just War,” *Tablet* [London] 257 (July 19, 2003) 4–5, at 4.

²⁸ He calls present official Catholic teaching on war “a composite of nonviolent and just war elements.” See Drew Christiansen, “Whither the ‘Just War’?,” *America* 188 (March 24, 2003) 8.

have criticized this development. Both Novak and Weigel in their arguments supporting a war on Iraq make a case for just war theory that does not begin with a presumption against war. They call for a retrieval of the Augustinian position that a just war “does not ‘begin with a presumption against violence,’ but rather with a presumption that addresses first the duties of public authorities to charity and justice and, second, that takes seriously a sinful world in which injustice and violence against the innocent will continue for all time.”²⁹ Novak and Weigel maintain that the war on Iraq was warranted by the legitimate aim of defending the tranquility of order violated by Saddam Hussein’s aggression.³⁰

The two authors oppose the development of the tradition to the point where the American bishops could write of “a new moment” in the Church’s teaching on war that includes a “presumption against the use of force as a means of settling disputes.”³¹ If the presumption is not held as absolute, however, it is unclear to me why the development is such a clear departure from the Augustinian position.

War for Augustine was never merely one option among many. He, along with other early church figures, accepted resort to arms out of necessity. That is why the later development of the criterion of “last resort” came to be widely accepted; it was not understood as a radical departure from the Augustinian position. And if war is a last resort and not a first option, it does not seem too far a leap to argue that even if war can be legitimate it is not to be preferred from the outset over other methods of defending and restoring justice. It may be necessary but only after other solutions are sought. As the violence and mayhem of modern war increase, especially for civilians,³² there should be no surprise that the obligation to seek alterna-

²⁹ Michael Novak, “An Argument That War Against Iraq is Just,” *Origins* 32 (February 20, 2003) 597. Weigel puts the point similarly: “The just war tradition does not ‘begin,’ theologically, with a ‘presumption against war.’ Rather classic just war thinking begins with moral obligations: the obligation of rightly constituted public authorities to defend the security of those for whom they have assumed responsibility, and the obligation to defend the peace of order in world affairs” (“The Just War Case for the War,” *America* 188 [March 31, 2003] 8). A more extended argument by Weigel, “Moral Clarity in a Time of War” can be found through the website of the Ethics and Public Policy Center (<http://www.eppc.org>).

³⁰ Novak, “War Against Iraq is Just” 596-97; Weigel, “Just War Case” 8.

³¹ National Conference of Catholic Bishops, *The Challenge of Peace: God’s Promise and Our Response* (Washington: United States Catholic Conference, 1983) no. 120.

³² In World War I the percentage of casualties who were civilian was 5%. In World War II the percentage rose to 50% and in Vietnam it was 80%. For conflicts in the past decade the figure was 85% to 95%. See Caritas Internationalis, *Working for Reconciliation: A Caritas Handbook* (Vatican City: Caritas Internationalis, 1999) 1.

tives to war becomes even more pressing. That is why a war that is not necessary is not just.³³

If the presumption against war is an articulation of this growing appreciation for the duty to seek nonmilitary solutions to conflicts before resorting to war as a final necessity, I believe the case can be made that Augustine, as well as Aquinas, Vitoria and Suarez, would welcome the “new moment.” As aware as we are of the destruction of modern war, the case for war should to be difficult to make. Not impossible, but difficult.

Jus in Bello

As has often been the case with *jus in bello* deliberations, the engine driving the debate is new technology. Pentagon officials continue to pursue the development of usable nuclear weapons. Journalists report that a still classified report (“National Security Presidential Directive 17”) indicates that the United States is developing strategies for attack that embrace the first use of nuclear weapons. There is pressure building to lower the threshold for the use of nuclear weapons by making them more precise and limited in their explosive power.³⁴

Traditionally, just war thinkers have sought to develop as bright and wide a line as possible between nuclear and nonnuclear war. It does not appear any less necessary today that such a divide is maintained. The psychological barrier against using nuclear weapons has proven valuable and the present inclination to create nuclear weapons of choice is misguided. If the case can be made that such weapons are essential to combat terrorism or the state sponsors of terrorism it has not been made yet.

Another factor affecting the *jus in bello* is the continued progress in developing “smart” weapons. An editorial in *America* written during the Iraqi conflict stated: “So far, the precision munitions, much touted by the military in advance of the war, have performed largely as advertised, and targeting for the most part has avoided civilian sites and dual-use infrastructure, a major advance in discrimination over the first gulf war.”³⁵ The editors rightly see there are two aspects to the principle of discrimination, indiscriminate weapons and the indiscriminate use of discriminate weapons.

Air power is now far more effective as a battlefield weapon than even a decade ago. The technology of precision-guided munitions is now so widely

³³ Opponents to the Bush administration’s decision to go to war argued precisely this point, that it was a war of choice not a war of necessity.

³⁴ Mike Allen and Barton Gellman, “Preemptive Strikes Part of U.S. Strategic Doctrine,” *Washington Post*, 11 December 2002, A1; Michael Gordon, “Nuclear Arms for Deterrence or Fighting?” *New York Times*, 11 March 2002, A1.

³⁵ Editors, “Rules of Engagement” *America* 188 (April 14, 2003) 3.

employed by the United States and has improved so dramatically that more tanks and other “hard” battlefield targets were destroyed in one week of bombing during the 2003 conflict than in the six weeks of the 1991 war. Air power is now a vastly more usable means of fighting in battlefield conditions since planes need not fly so low to achieve accuracy that they make themselves vulnerable to ground forces. The new technology has made air power both safer and more accurate. It is no longer necessary to have anywhere near as many ground forces (personnel and vehicles) to win a battle as long as there is a decisive edge in air power.³⁶

The appeal of precision-guided munitions, however, can lure the United States into an “ethical trap” according to George Lopez. Because the risk of inadvertent civilian death in bombing has decreased there has been a rise in the number of sites listed as potential targets. Here we see the risk to the second aspect of discrimination, as more infrastructure of a society is considered open to attack. “Facilities, which would have been targeted in an earlier era only if a nation was engaged in carpet bombing or ‘total war,’ have now been made accessible targets by the ‘humane’ nature of the weapons.”³⁷

This leads to a second issue that Lopez identifies as part of the *jus in bello*, the number of civilian deaths that occur after a war as a consequence of the destroyed infrastructure. Commenting on the destruction of infrastructure in the first Gulf War, Lopez stated: “By the end of 1992, more than a hundred thousand Iraqi civilians died from the lack of clean water and sewage disposal, and the breakdown of electrical service to hospitals.”³⁸

Michael Schmitt, professor of international law at the George Marshall European Center for Security Studies, sees the problems Lopez identifies

³⁶ The amount of ground troops in 2003 was far less than half that used in 1991. Stephen Budiansky, “Air War: Striking in Ways We Haven’t Seen” *Washington Post*, 6 April 2003, B1 and Michael Vickers, “Ground War: Doing More With Less” *Washington Post*, 6 April 2003, B1. Ironically, the success of air power and the confidence it inspired in American war planners may account for why there were insufficient troops available on the ground to secure Iraqi cities as the occupying forces arrived. Winning the war through air power required less personnel but securing the peace with less ground troops has proven dangerous and difficult. See Mark Danner, “Iraq: The New War,” *New York Review of Books* 50 (September 25, 2003) 88–91.

³⁷ George Lopez, “Iraq and Just-War Thinking,” *Commonweal* 129 (September 27, 2002) 15.

³⁸ *Ibid.* 15. Yale political scientist Bruce Russett has argued that civilian deaths due to actual combat are far less than civilian deaths owed to destruction of civilian infrastructure (especially the health system). See “Indirect Consequences of War,” in *Human Security Report 2004*, ed. Andrew Mack (forthcoming 2004). Professor Russett kindly provided a copy of his typed manuscript.

as likely to increase due to factors that strain the principle of discrimination. Among the factors he identifies are “compellence strategies” that encourage broad targeting schemes aimed at motivating a civilian population to compel their leadership to surrender or flee. Thus, one NATO commander during the Kosovo conflict favored pressuring the citizens of Belgrade through destruction of the city’s infrastructure in order to have them force the hand of Slobodan Milosevic.

Schmitt notes that European and American military generally disagree on what objects count as military targets. The United States treats as legitimate targets those objects that are “war sustaining,” thereby including many industrial and economic targets that Europeans consider out of bounds as fair targets. The Europeans read the laws of war in the Geneva Convention more narrowly, restricting targets to those that “have an immediate effect on the enemy with whom one is engaged.”³⁹

Raising the issue of the destruction of civilian infrastructure leads to another important conversation among just war theorists, the usefulness of a third category beyond *jus ad bellum* and *jus in bello*.

Jus Post Bellum?

Michael Schuck was among the first moral theologians to write about the need to develop a set of moral norms to govern the way we end war.⁴⁰ Schuck proposed his idea in the aftermath of the first war with Iraq. He suggested three principles as part of a *jus post bellum*. The principle of repentance requires a sense of humility and remorse by the victors for the suffering and death that was brought about even in a just struggle. An appropriate sense of mourning is needed when Christians kill even if the killing is judged legitimate. A principle of honorable surrender means that the terms of surrender imposed ought not demean the vanquished nor be punitive in intent. Finally, the principle of restoration completes the suggested *jus post bellum*. This requires, at a minimum, that the victor return to the fields of battle and remove the remaining instruments of war, e.g. land mines. A maximum reading of this principle proposes that the victo-

³⁹ Michael Schmitt, “Ethics and Military Force: The *Jus in Bello*,” edited transcript of Carnegie Council Workshop (January 2002). Available at <http://www.carnegiecouncil.org/viewMedia.php/prmTemplateID/8/prmID/98> (downloaded October 28, 2003). Daphne Eviatar makes a similar point that the U.S. refusal to sign the 1977 protocols added to the 1949 Geneva Conventions, is due in part to the American disagreement over how to measure the military value of a target. “Civilian Toll: A Moral and Legal Bog” *New York Times*, 22 March 2003, D7.

⁴⁰ Michael Schuck, “When the Shooting Stops: Missing Elements in Just War Theory,” *The Christian Century* 101 (October 26, 1994) 982–984.

rious side assist the losing nation(s) in repairing the basic infrastructure of society.

Canadian philosopher Brian Orend has further developed the idea of justice after war as part of the just war tradition. He notes that the need for establishing some moral consensus is evident because there exists no international treaty to regulate the final phase of war and there are strong differences about the nature of a just peace. History makes clear that a bad peace plants the seeds of future violence. "The raw fact of military victory in war does not of itself confer moral rights upon the victor, nor duties upon the vanquished."⁴¹

Orend also makes the point that anxiety about an unjust or punitive end to war can prolong the fighting. "Since they have few assurances regarding the nature of the settlement, belligerents will be sorely tempted to keep using force to jockey for position."⁴²

Seven principles are proposed as constituting a proper *jus post bellum*. Proportionality and publicity require that a peace settlement be fair and reasonable, ruling out unconditional surrender. Terms of peace should be public as well. Rights vindication insists all the basic rights violated that were the cause of war be restored, but revenge be avoided. Discrimination mandates that distinctions regarding culpability be made between leaders, soldiers and civilians. Broad punishments such as economic sanctions should be avoided. The first rule of punishment applies when a defeated nation has been a blatant aggressor. Leaders ought to be subject to public trial for war crimes before an international tribunal. The second rule of punishment accepts that soldiers on all sides of the war effort also be subject to war crimes prosecution. Compensation governs the nature of any financial restitution claims against the defeated nation. A country ought not to be reduced to destitution but allowed sufficient resources to engage in reconstruction. Finally, rehabilitation covers the extent of internal reform that can be demanded of a defeated nation.⁴³

Both Schuck and Orend make important points regarding the need for continued renewal of the just war tradition. My comment would be to underscore one norm, namely restoration, that both men have included as part of their proposals.⁴⁴ Literal restoration of the state of affairs prior to a war is not possible. It is also not desirable since the prior state of affairs is what gave rise to conflict. Rather a secure and true peace requires the establishment of public order that satisfies basic human rights.

⁴¹ Brian Orend, "Justice After War," *Ethics and International Affairs* 16 (2002) 43–56, at 44.

⁴² *Ibid.* 43.

⁴³ *Ibid.* 55–56.

⁴⁴ Schuck is explicit that this is a third norm while Orend treats the topic as part of his norm of Rights Vindication.

One result of the debates over humanitarian intervention has been greater attention to the aftermath of war. The question of what was achieved by humanitarian intervention is important, especially since the purpose was to enhance the well-being of people rather than punish or vanquish them. The humanitarian basis for recent armed conflict has pushed a new set of issues into the forefront, issues which the just war tradition must take into account.

If war with Iraq was fought for the purpose of regime change and the liberation of the Iraqi people, it is imperative that the postwar situation be factored into any ethical assessment of the American-led war. The very purpose of such a war was to alter the internal situation of the Iraqi nation, so as to increase stability and the chances for peace in the region. But what kind of Iraq will emerge from the war? And what will be the ongoing obligation of the United States to its defeated enemy now that the war is over? These questions lead to an expansion of the principle of restoration.

The suggested expansion encompasses the work of securing domestic peace through protection of civil liberties and human rights, as well as helping to organize police and judicial institutions so that the necessary social space is created for men and women to begin the work of restoring public life. A duty to establish civil society expands the principle of restoration by extending “basic infrastructure” to include not just the material infrastructure of roads, electricity, and communication, but the human infrastructure for peaceful communal life.⁴⁵

The experience of a post-Taliban Afghanistan is a reminder that the resolve to promote human and social development after war is crucial. A measured evaluation of what has been accomplished in that nation so far does not offer great encouragement to what the United States will do for a post-Hussein Iraq.⁴⁶

CONCLUSION

We are now approaching 40 years since the promulgation of *Gaudium et spes* and its call for evaluating war “with an entirely new attitude.” Such a

⁴⁵ An encouraging account of recent church-sponsored efforts is R. Scott Appleby, “Catholic Peacebuilding,” *America* 188 (September 8, 2003) 12–15.

⁴⁶ The track record of the United States in “nation-building” is not promising. See Minxin Pei and Sara Kasper, “Lessons from the Past: The American Record on Nation Building,” *The Carnegie Endowment for International Peace Policy Brief* no. 24 (May, 2003). Not one American supported surrogate regime has made the transition to democracy and only one case of direct American administration has done so. Prior to Afghanistan, the United States took on nation-building responsibilities in Haiti. “No one can argue seriously that the United States came even close to completing the job it undertook in Haiti” (Peter Hakim and Dan Erikson, “Add to Our To-Do List: Finishing the Job in Haiti” *Washington Post*, 12 October 2003, B4).

span of time is not that long for substantive development in a tradition. The “new attitude” has not created a clear and settled moral consensus nor has a revised framework for assessing war come into view. It continues to be developed even as the just war tradition confronts the challenges of terrorism, new weaponry, and expanded calls for intervention.

Drew Christiansen described the official Catholic position as “a composite of nonviolent and just war elements.”⁴⁷ The exact mix, however, is undetermined at this stage. There are noises emanating from Vatican sources that the just war tradition is losing favor.⁴⁸ Archbishop Renato Martino, head of *Justitia et Pax*, suggested an analogy with the present teaching on the death penalty. In principle, war, like capital punishment, is permissible, but in practice neither should receive support. If that is the direction in which the Church is moving we can expect a lively debate.

George Lopez suggests that “we desperately need the contemporary equivalent” of the pastoral letter *The Challenge of Peace*. I believe it is premature to attempt an official articulation of the Church’s understanding of just war theory.⁴⁹ New developments need further scrutiny and evaluation. What is needed today is not a pastoral letter but the searching public discussion of the early eighties that was partly stimulated by the *process* of writing the 1983 letter. Regrettably, the present American hierarchy is unprepared to lead such a public conversation. Others will have to take up the formidable challenge of promoting serious conversation in our public spaces about war and peace.

⁴⁷ Christiansen, “Whither the ‘Just War?’” 8.

⁴⁸ Niall O’Brien has suggested that with regard to the just war tradition, John Paul II “has changed the rules of the game” (“War the Moral Issue” *The Furrow* 54 [2003] 529–33, at 532).

⁴⁹ One suggested approach to revising just war theory is Mark Douglas, “Changing the Rules: Just War Theory in the Twenty-First Century,” *Theology Today* 59 (2003) 529–45.