

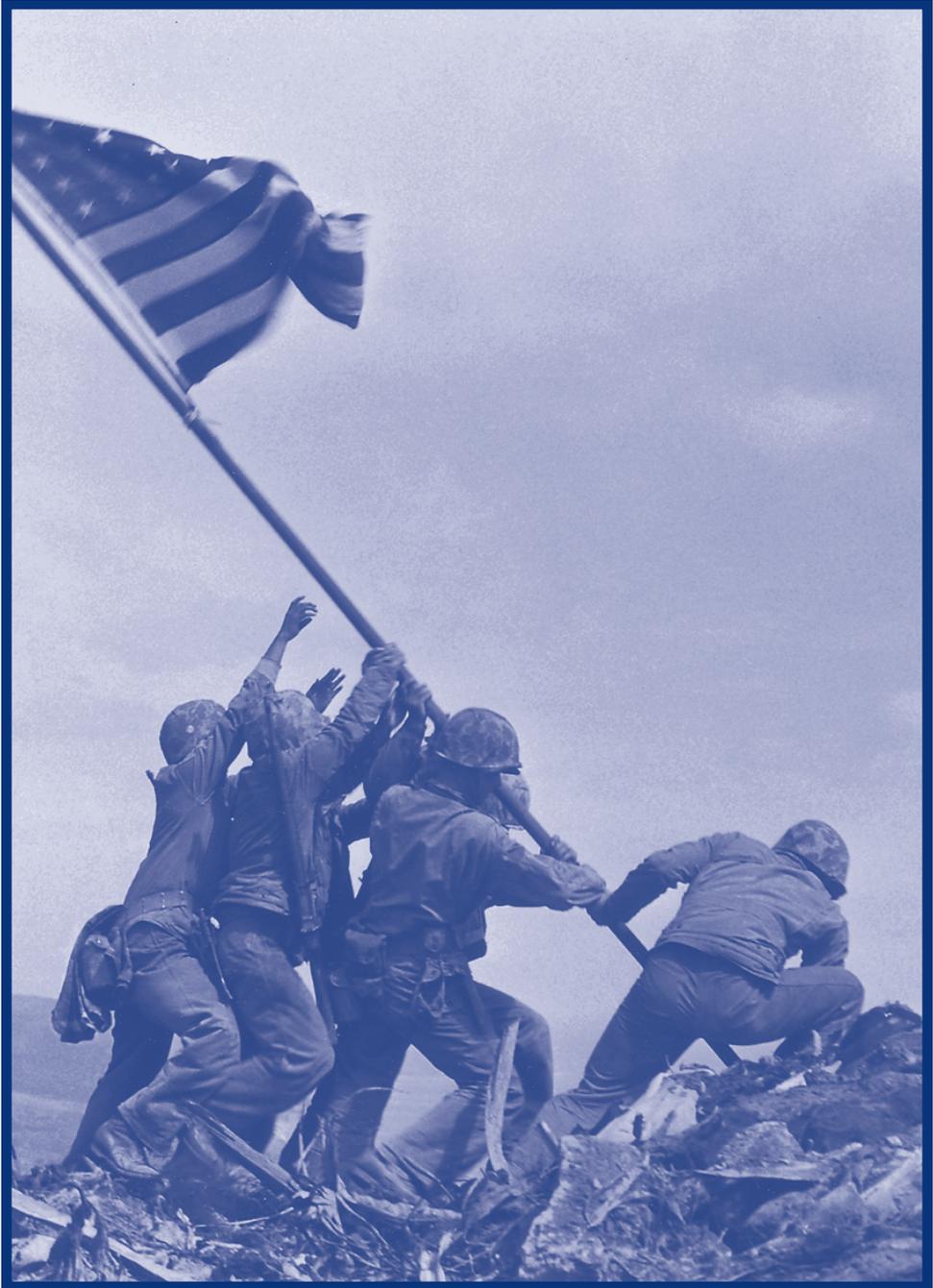
PURSUIING THE
GLOBAL
COMMON GOOD

Principle and Practice in U.S. Foreign Policy

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THE JUST WAR ETHIC

Protecting the Global Common Good

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The concept of the common good has an ancient lineage and a modern coinage. From its early roots up to the 20th century, the common good has referred primarily to the goal of each individual society to create a broad social fabric of spiritual, material, and temporal goods from which all would benefit. The expansion of the common good beyond national boundaries emerged in the second half of the 20th century. Pope John XXIII first invoked the idea of a global common good in 1961, as he recognized that the growing interdependence of the world in material terms required a moral vision that would connect the national common good to the international common good. Issues such as security, political economy, human rights, and global governance were related to national and international common interests. And all of these issues come to the forefront when exploring the role of the Just War Ethic in the pursuit of the global common good.

International and national security is a fundamental aspect of the common good. The use of force is a continuing possibility in world politics. The Just War Ethic, or JWE, distinguishes between morally legitimate and morally harmful methods of using force; its premises have been grounded in the concept of a single human community. Even when war is morally necessary, there are preexisting moral bonds which are maintained even during conflict. The JWE has traditionally been used to measure the use of force pursued for reasons of national security. But the nature of modern war and the interdependence of the global polity today requires that force must also be measured in terms of its impact on international security.

The JWE is an ancient moral theory which has experienced a revival in the midst of modern warfare.¹ Today the theory is appealed to (explicitly or implicitly) by international organizations, government commissions, and the U.S. military, as well as by the more traditional interested parties—theologians, moral philosophers, and international lawyers. The revival of interest in the ideas of this ancient theory is rooted in the fact that the JWE reflects and embodies two broader trends in world politics.

The first is the growing interest in and recognition of the need for explicit moral analysis of a state's foreign policy objectives and methods. To some degree this trend, visible since the 1970s, is a reaction to the dominance of one strand of the realist conception of foreign policy and warfare.²

In the immediate post-war era through most of the 1960s, the realists simply assumed it was unrealistic to be explicit about the moral dimension of foreign policy. The realist argument was cast in terms of complexity, consequences, and crusades.

The complexity critique essentially held that the attempt to be explicitly conscious about the moral dimension of policy would only add to the already complex pattern of reasoning needed to conduct foreign policy in the anarchic world of states. The argument from consequences asserted that past efforts to attend to moral concerns usually produced unintended (and detrimental) results. Among these results: resort to a crusade mentality in the name of spreading democracy, protecting human rights, or ending war forever.

The realist critique had its merits; examples existed for each of the claims made. The defect of the argument was the implicit assumption that the moral dimension of policy involved a choice: One could include it or exclude it. The problem, of course, is that some morality always guides policy choices. It may be described in non-moral terms, or it may be shrouded in arguments about power and interest, but morality is inherent in human behavior, so the real question is whether the moral dimension of policy is explicitly defined and argued in a disciplined way or whether it lies embedded in other factors without explanation. The moral factor can drive a policy without ever being acknowledged or justified.

Over the last 30 years, dominant issues in world politics made it clear that the human consequences of policy decisions required explicit moral justification. Three broad areas of policy exemplify this need: human rights, weapons of mass destruction, and globalization. Each area of policy is undoubtedly empirically complex, but each area also has a demonstrable impact on human life and human rights. The trend over the last three decades in both the study of world politics and the arena of diplomacy and strategy has included increasing attention to the ethical dimension of policy. For many, the JWE was the first place they turned for a developed moral vision about war and peace.

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The second major trend reflected in the JWE is the attention now paid to the role of religion in world politics.³ The two realities, ethics and religion, are often conflated, but they are analytically distinct, particularly in any discussion about world politics. Many of the most prolific scholars writing in ethics do so without any connection to religious ideas or convictions. But the dynamics of post-Cold War politics have brought religious themes explicitly into the analysis of international relations. Several of the intractable intrastate conflicts of the 1990s included a religious dimension; the appeal to Islam in post-9/11 struggles highlighted the need for an understanding of this major religious tradition; in the United States, religion is woven through both domestic politics and foreign policy debates.

The JWE today stands independently of any religious tradition, but its roots, concepts, and some of its premises have distinctively Christian connections. As such, the JWE can be argued in explicitly religious terms or it can be conceived and used in the style of moral philosophy.

The Just War Ethic: A Synthetic Statement

My purpose here is to move across the religious-philosophical background of the JWE in order to provide a brief statement of its origin and evolution as well as a summary statement of the categories it offers today for anyone seeking to assess modern warfare in moral terms. The JWE is rooted simultaneously in the Christian church, but also in the Roman Empire. Cicero had developed a conception of just war, but the most commonly acknowledged origins of the ethic lie in the writing of Augustine of Hippo, a fifth century bishop in North Africa. The principal catalyst for Augustine in addressing the ethics of war was to defend the role of Christians as loyal citizens of the Roman Empire. One test of loyalty was what position Christians held about war. The New Testament contained key references—by word and deed—advocating nonresistance in the face of evil. Augustine was not prepared to endorse the use of force easily. But his reading of human nature and human history was grounded in part in shared convictions with political realism.

Augustine's realist premise was crisply captured in his conviction that "war is the result of sin and war is the remedy for sin."⁴ In non-theological terms, Augustine expressed his conviction that the possibility of conflict existed just below the surface of daily life and, therefore, some agency in human affairs should possess the legitimate right to oppose injustice up to and including the use of force.

This premise yielded Augustine's parsimonious statement of the content of a just war. War was legitimate when: There existed a just cause (an injustice which needed to be resisted); it was declared by proper authority (one who held responsibility for the common good of the political community); and war was fought with the right intention (to restore peace, not from a motive of revenge or hatred). The contemporary version of the JWE is more expansive and more complex than Augustine's statement of it.⁵ But his pivotal significance in the tradition was to reverse the judgment that is often seen as self-evident—that all war must be morally wrong, however necessary it is in political terms. Augustine and the just war tradition have held a more complex position: War should be held to stringent standards of justification, but it can be morally legitimate, as well as politically necessary.

The road from Augustine to the modern version of the JWE passes through extensive stages of development. Changing forms of political authority (empire, medieval commonwealth, sovereign states, international organizations) and changing conceptions of strategy required that the tradition grow and be reshaped to keep alive the basic theme of the ethic—that war can be legitimate, but it must be limited in its purposes, methods, and intention.

The JWE to which scholars, statesmen, and strategists appeal today is usually structured in two broad categories: The (moral) causes for war (*Jus ad Bellum*) and the (moral) means of war (*Jus in Bello*). The ethic is not a tightly designed theory but a tradition of moral analysis that contains multiple theories of how it should be argued. In spite of the pluralism, it is possible to state and summarize its key concepts that then must be engaged with political-strategic realities.

The Jus ad Bellum

James Childress, a philosopher and religious ethicist, has argued that the JWE always raises the basic question: can war ever be justified?⁶ Augustine answered the question in principle. The specification of which kinds of behaviors constitute a “Just Cause” for war yields both core categories and some debated causes. The core is best represented in modern parlance as “aggression.” Aggression against the life and/or basic rights of others is a consensual just cause.⁷

A more debated just cause is the right to take up arms against one’s own government; it has been justified in the tradition but also carefully circumscribed. A modern debate—more legal than moral—has been the right (or the duty) to intervene in a domestic conflict in another state. Just War, military action to prevent aggression across state borders, has had, until recently, more support than Just Intervention, military action addressing internal conflict or repression in another state.⁸

Beyond “Just Cause,” the other ad bellum categories include: proper authority, right intention, last resort, possibility of success, and proportionality. A more detailed history of the JWE could unfold the history and definition of each of these moral categories. Here, only selective illustrations are possible.

The concept of “Proper Authority” is as old as Augustine’s notion of “care for the common good,” but the possessors of that authority have varied: medieval princes, political leaders in democracies, and sovereign rulers generally. In the modern context—sovereign states couched in the setting of the U.N. Charter—there is a strong consensus about the right of states to act in the name of international order, self-defense or defense of other states under attack (Article 51), but less clarity about proper authority to undertake intervention. Finally, there is even less clarity, and much less support, for the moral authority of individual states to engage in preemptive war.

The concept of “Last Resort” is inherently open to debate, but it serves a useful if imprecise function. The idea that part of a state’s moral bona fides is the willingness to use political-diplomatic measures to resist injustice before resorting to war keeps alive the awareness of how unpredictable and dangerous military force is as an instrument of justice. Beyond diplomatic measures, the idea of Last Resort is most often debated today in terms of resort to economic sanctions as a way to change state behavior. It is important to note that the Last Resort principle is not meant to make it impossible to resort to force.

Finally, the idea of “Proportionality” is both central to the JWE and also seldom capable of precise line drawing. The meaning of the term is clear: If the justification of war lies in its necessity to prevent harm, then the war itself should not produce more destruction and harm than its original purpose. Proportionality is, in part, a consequentialist judgment; it assesses right action in light of the consequences produced. The JWE is not simply a consequentialist ethic, as will be clear when we assess the means of war.

But within the overarching ethic there are consequentialist judgments made. The proportionality test should be used before war begins, while it is pursued, and retrospectively to draw lessons from experience. The nuclear age often raised proportional judgments; the expected consequences of

this kind of war served as a restraint even in situations of severe crisis, such as the Cuban Missile Crisis. The Vietnam War led many to decide after years of war that standards of proportionality had been surpassed. Retrospective assessment of the consequences of Iraq may well lead to firm judgments against preventive war.

The Jus in Bello

Much of the writing and use of the JWE in the 20th century focused on the Jus in Bello.⁹ In part this examination of the means of war was surely due to the nature of military technology and its impact on the way wars were fought. The inauguration of air warfare, the advent of the nuclear age and the increasing sophistication and destructive capability to take the war to the adversary's homeland and domestic society raised profound moral questions. In addition, the two moral criteria which constitute the Jus in Bello were more familiar to politicians and strategists and to the general public than some of the ideas in the Jus ad Bellum.

The two criteria are the principle of noncombatant immunity and the principle of proportionality. The first prohibits absolutely the purposeful, intended attacks on the civilian population. It equates such attacks with murder as unjustified killing. The second principle once again argues that in tactics and strategy the good one seeks must not cause more harm than the benefits it produces. Some commentary is needed to use the principles accurately.

The first principle does not assert that if civilians are killed in war, the tactics or strategy are morally wrong. The killing has to be planned or intended; the technical phrase is "directly intended." In judging the tactics of war, the noncombatant immunity principle is used first; if the strategy fails this test, it should not be employed. If it passes this test, then a second judgment of proportionality must be made. Attacks on marginally significant targets where large-scale damage is the likely outcome can be ruled out even if civilians are not targeted. Strategic bombing in World War II failed the noncombatant principle. Some of the bombing in the Gulf War was criticized on the grounds of proportionality.

The Uses of the Just War Ethic

The JWE is undoubtedly the product of the Christian moral tradition. More specifically, in the modern era, it has been sustained institutionally primarily in the Catholic Church. But neither of these comments should be taken in isolation. While Catholic theologians kept the discourse alive, it has been primarily Protestant scholars who have done the most creative work in the last half-century.

Moreover, the fact that the JWE is so closely tied to the Christian tradition does not mean that other religious traditions have been silent about war and peace. Among others, Professor Sohail Hashmi of Mount Holyoke College has shown how the Islamic tradition possesses a moral argument that is parallel to that of the JWE. Michael Walzer, the author of the leading textbook on just war in American academic life, begins his analysis of Jewish thought on war with the assertion that no systematic analogue to the JWE exists in Judaism, but there are categories available to discuss war and peace.¹⁰

Beyond religious discourse there are two notable ways in which the philosophical categories of the JWE have been taken over and extended into wider secular discourse. The first was the way in which the moral tradition of just war thinkers—among them the 16th century natural law theorists Francisco de Vitoria and Hugo Grotius—provided a basis for the beginnings of positive international law. This transition and later development has always illustrated both shared perspectives and differences, but the moral-legal analysis of war in the modern era has created a double effort at restraint. In the latter decades of the Cold War era, several political scientists and strategic thinkers turned to just war categories as they grappled with the political-strategic challenge of containing the dangers of the nuclear age.

Politics, Strategy, Ethics: Three Challenges

Pierre Hassner, a preeminent French analyst of world politics, recently made the following assessment of the contemporary international order:

It is not an order at all in the plain sense of the word. We live in a time of fundamental heterogeneity and contradiction pertaining both to the nature of political units and the character of tensions, solidarities and oppositions between these units.¹¹

Hassner traces the development of this disorder from the end of the Cold War. Faced with the lack of a structural order, Hassner identifies two major challenges: understanding the character of modern war and facing the problem of proliferation of nuclear weapons.

I find Hassner's description of world politics persuasive, but I would describe the specific challenges a bit differently. I have argued previously, and will continue to do so here, that U.S. foreign policy, and the broader international system, face a three-dimensional problem;¹² each dimension is a threat to international order (the global common good) in itself, but at times the three are fused in a single policy challenge.

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The three dimensions are: managing weapons of mass destruction, deciding about humanitarian intervention, and responding to transnational terrorism. Each of these issues has a distinct history, complete in itself; each combines issues of strategy and moral choice. All three were part of the debate about Iraq in 2002–2003, and they could coalesce again in other parts of the globe. Just War criteria are relevant, indeed necessary, to determine a coherent response to the three issues as they relate to the global common good.

Redefining the Nuclear Threat

While WMD define a class of multiple weapons, the concentration here will be on the most urgent problem, addressing nuclear weapons in an international order vastly different from the Cold War context.

Since their invention and use 62 years ago, nuclear weapons have posed a unique threat to the JWE. At the heart of this moral theory of war is the principle of limitation. The only morally legitimate use of force is a limited use—limited to a narrow range of specific causes and limited in its methods and means. Nuclear weapons promise war without limits. While this fact remains true today, the political-strategic shape of the nuclear challenge has changed. The Cold War threat focused upon two global powers with thousands of weapons and the threat of a catastrophic clash guaranteeing millions of casualties.

In the shadow of this cosmic problem another threat, proliferation of nuclear weapons, held a secondary position. Today proliferation to state and non-state actors has become the principal problem. The U.S.-Russian relationship is hardly smooth and simple, but a massive nuclear exchange is unlikely, if not unthinkable.

What clearly must be thought about and addressed is the danger of a world of multiple sources of nuclear danger, quite beyond the present nine nuclear states. The Cold War ethical issues regarding nuclear weapons began with the objective of preventing their use under any conditions. This objective was a shared goal among moralists and strategists. Deterrence was the primary method of restraining use; here moralists and strategists partially shared positions, with the former often questioning specific elements of deterrence (targeting, threats, intentions). Finally, significant consensus existed in support of arms control and disarmament.

The moral issues embedded in proliferation policy include the following: the rationale of the nonproliferation regime, the role of deterrence, and the responses proposed against proliferating states. The heart of the nonproliferation regime has been the Nonproliferation Treaty. The NPT seeks to prevent nuclear states from sharing nuclear weapons or the means to produce them with others, and it seeks to dissuade non-nuclear states from pursuing nuclear status. The treaty makes two promises: Non-nuclear states will have access to nuclear power for peaceful purposes, and the nuclear states will pursue the road to disarmament. The latter promise is clearly unfulfilled; the former can be a source of contention.

The NPT has been successful (188 signatories), and yet it is increasingly fragile. At the core of its fragility is a declining belief in the rationale of the treaty, its legitimacy, and its fairness. To return to Hassner, “the present nuclear order, as institutionalized by the Nuclear Nonproliferation Treaty, has lost its legitimacy and credibility in the eyes of most of the non-Western world.”¹³

Legitimacy carries a legal sense, credibility a moral quality; together they point to a fundamental truth: In a world of sovereign independent states, if some are to abstain from what others possess, there must be a compelling strategic and moral case to do so. The strategic rationale of NPT is systemic safety; the system as a whole will be safer if nuclear weapons are not regarded as “normal,”

something to which all should aspire. The moral rationale seeks to reinforce and universalize what Nobel Laureate Thomas Schelling has described as the nuclear taboo.¹⁴

Both the strategic and moral arguments are challenged by the existence of nine nuclear states, none of which show significant inclination to disarm. The loss of legitimacy and credibility is rooted in a sense among many that the regime is unfair and, therefore, unjust. In terms of the JWE, there is not a “just cause” to continue the two-tiered system. When this judgment is then combined with the multiple reasons why states seek nuclear weapons—regional dangers, status, the perks which seem to accompany status—the NPT is directly threatened.

In the face of an eroding rationale for the NPT regime, what responses are proposed? There are two: deterrence and preemption. They pose quite different moral questions. Deterrence, of course, was the central strategic concept in managing the nuclear relationship of the superpowers. Although one could never prove it was the reason that nuclear weapons were not used during the Cold War, it was widely understood to be the major restraint on use. Its restraining influence was widely endorsed by moralists, but questions and critiques accompanied the support they gave deterrence. The major issue was whether restraint was purchased by a threat to kill civilians purposefully and in large numbers.¹⁵

Does deterrence fit into the policy of nonproliferation? The Bush administration has cast doubt on the effectiveness of deterrence as part of its argument for a preemptive use of force. Undoubtedly deterrence may carry little weight for terrorist groups. But the disparagement of deterrence is a mistake strategically and morally. Terrorist threats must be addressed, but the primary threat of proliferation lies with states; deterrence clearly has a capacity to restrain states, even ideologically driven regimes.

Moreover, the kind of threat needed to give states pause about moving toward nuclear weapons need not be the massive indiscriminate strategy often associated with the days of the superpower conflict. A strategy of deterrence, confined to discriminate and proportionate threats, would meet the requirements of both just cause and just means.

Responding to Terrorism

The acknowledgement that deterrence will have limited effect on the minds or methods of terrorists is only one dimension of a broader truth. Classical conventional war also has limited potential against the threat of terrorism. The “long war” in both Iraq and Afghanistan testifies to the role that conventional combat can and cannot achieve against the methods of terrorism.

From the earliest days after 9/11, observers such as British Parliamentarian Michael Howard cautioned against the conceptual design of a “war” on terrorism.¹⁶ Howard’s point was not to rule out military force, but to stress its relative role in a broader strategy needed to counter terrorist threats. From the perspective of the JWE, terrorism of the 9/11 variety raises three questions.¹⁷

First, it is transnational terror, a reality somewhat different in its scope, range, and destructive capability from previously encountered terrorist groups within states. Its transnational character

raises issues of “proper authority.” In a world that is now an intricate pattern of states, transnational organizations, and international institutions, do terrorist groups have any political standing?

Similar questions have been faced before, even in the medieval era, and the argument that coalesced since the 17th century at both the moral and legal level has been to restrict proper authority standing to states and, more recently, to the U.N. Security Council. In any discussion of terrorist groups, it is possible that they may appeal to “just causes” as their motivation. Recognition of that fact, however, should not be expanded to “proper authority.”

The global common good is in major aspects an appeal to issues of justice; the just cause category can be used to identify why some groups are moved to terrorist tactics. But the global common good is also about issues of national and systemic security, giving terrorist groups moral standing as “proper authorities” to use force is a fundamental strategic and moral mistake. It threatens the already minimal standards of order (a common good value) that exist in the anarchical world of international relations.

This denial of moral standing to terrorist groups is powerfully reinforced by their second characteristic: Terrorists (past and present) deliberately attack, often as their primary target, civilian centers. In much of the debate about terrorism, this is the defining characteristic of terror. As noted above, within the JWE, the prohibition of directly intended attacks on civilians is treated as an absolute moral rule without exceptions.

The third characteristic of 9/11 terrorism is its appeal to religious reasons for war. Two comments are immediately necessary: First, as was evident in the medieval crusades and in the modern “wars of religion” in Europe, appeal to a religious rationale is not unique to today’s terrorists; second, the appeal then and now can be seen as corrupting an authentic religious tradition rather than supporting it. From the perspective of the JWE, as it is understood today, the appeal to religious reasons for war is regressive and should be opposed. Michael Walzer identifies a statement from Francisco de Vitovia that captures the lessons learned from religious wars. Vitovia simply said, “Difference of religion cannot be a cause of just war.”¹⁸

The categories of the JWE—cause, authority, and means—are all relevant to an assessment of modern terrorism. But moral categories alone do not constitute a strategic response. Given the character of transnational terrorism, how should the strategic and moral elements of a response be related? First, while it is clearly too late to rethink the wisdom of defining the response as a “war on terror,” it is clearly possible (and now widely accepted) to recognize that the military component is a limited instrument of resistance to terrorism.

When Michael Howard warned against the U.S. definition of the “war” strategy, he was drawing in part on the British experience of confronting domestic terrorism. His proposal was for much more attention to legal, police, and political measures at the international level. Clear recognition and acceptance of a limited military role is a first step in revising strategy.

A second step, again more broadly accepted today than in 2001-2003, is that transnational terrorism can only be addressed in a multilateral manner; the recent retreat of the Bush

administration from the advocacy of unilateralism may be very late, but still should be fostered as much as possible.

Third, the issue of religion and war must be addressed with clarity. The West has had its experience with this combustible mixture. As noted, the long-term lesson adopted was to build a wall between them as much as possible. Islam has a different way of relating the political and the religious, so insulating war from religious appeals is a more challenging task.

Moreover, there are multiple relevant actors involved: Scholars within the tradition and across traditions can clarify the issues doctrinally, but political leaders may have quite different purposes in using religious appeals than scholars do. Finally, religious leaders at the local level, with constituencies and communities of support, can have different interests and objectives than either scholars or political leaders. The solution for those politically or religiously outside the Islamic community is to engage these various actors, not to invade another religious community, but to find as many relationships of restraint as possible.

Finally, there is the proposal about preemption. As noted above, it is the alternative strategy to deterrence—alternative in the sense that its proponents argue that deterrence has been eroded as a viable response to terrorism. Hence the National Security Strategy of 2002 (reiterated often since then) states the case for preemption: “In the Cold War, especially following the Cuban missile crisis, we faced a generally status quo, risk-averse adversary. Deterrence was an effective defense. But deterrence based only upon the threat of retaliation is less likely to work against leaders of rogue states. ... Traditional concepts of deterrence will not work against a terrorist enemy...”¹⁹

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In the vigorous debate since 2002, distinctions have been drawn between preemption and preventive war. The meaning of the distinction is that preemption is generally supported as a response to a certain, substantial, and imminent threat; preventive war is undertaken against an uncertain, future possible threat and finds little support normatively or strategically. Columbia University professor and Brookings Institution Fellow Richard Betts draws the distinction concisely: “Preventive war is almost always a bad choice, strategically as well as morally. Preemption is another matter—legitimate in principle and sometimes advisable in practice.”²⁰

I would press Betts’s useful distinction one step further, between preemption as a tactic—forced upon a state by near certain aggression—and preemption as a declaratory posture announced to the world by the preeminent military power. The latter declaratory posture easily establishes a

precedent for others. Legitimizing preemption for everyone shifts the security dynamic of world politics toward quick resort to force, exactly what the JWE seeks to avoid.

In the Just War tradition, the medieval authors and their descendants distinguished between defensive and offensive war. Both were regarded as in principle legitimate: the former to resist attacks, the latter to punish criminal action or to recover what had been unjustly taken. Catholic theologian John Courtney Murray's interpretation of the tradition that only defensive wars (defense of self or others) were now legitimate has found broad if not universal agreement among moralists.²¹

Preventive war falls under the prohibition against offensive war; preemption could meet defensive war standards. To do so it would have to satisfy three tests: just cause (a truly imminent threat), proper authority (acting with appropriate legitimization, defensive war, or authorization from the U.N. Security Council), and last resort (other options are ineffective).

Reshaping the Norm of Nonintervention

Both WMD and terrorism have been closely tied to the Iraq debate. But between the end of the Cold War and the attacks on 9/11, a distinctly different issue of war and morality assumed center stage. It was the challenge of humanitarian intervention.²² The cases ran from the Balkans to the Horn of Africa. The issue was neither interstate war nor transnational war; it was intrastate conflict. Often it was the product of ethnic, economic, political, and religious conflict; its results were devastating, reaching a climax in Rwanda.

It posed a double challenge: normative and tactical. The normative challenge involved a clash of norms—moral arguments for intervention and legal arguments upholding the positive law of nonintervention. The tactical issue was who could and would act effectively even if consensus could be reached that a duty existed to defend those under attack in Bosnia, Somalia, Rwanda, and Kosovo.

The legal prohibition against intervention has a solid pedigree. To some degree it is rooted in the memories of the religious wars of 16th and 17th centuries. It also has normative status in the U.N. Charter. Its rationale arises from the political setting of sovereign states—none acknowledge a superior political authority. To moderate this state of anarchy, nonintervention is designed to deprive states of a right to use force because of internal conditions in another state.

As Catherine Guicherd, the former Deputy for Policy Co-ordination to the Secretary General at NATO Parliamentary Assembly, and others have observed, the four-century old norm of nonintervention has come under pressure from the emerging body of human rights law.²³ Conceived and fostered within the United Nations, it asserts an obligation of states to attend to human rights violations within other states. But it did not assert a right to military intervention; that question arose forcefully in the 1990s. Two responses to it were developed.

The JWE was used to produce a "Just Intervention" argument. Briefly, it upheld nonintervention as a presumption, but acknowledged reasons to override the presumption. The reasons constituted "just causes" for intervention; genocide was the clearest case but others, such as failed states,

expanded the list of exceptions. The criteria of last resort, proper authority and just means, then filled out tests for just intervention.

The second response built on Just War categories. It was the product of an authoritative commission sponsored by the Canadian government: The International Commission on Intervention and State Sovereignty. The Commission sought to redefine the question of intervention. Its report, "The Responsibility to Protect," captured the innovative move it made to resolve the moral-legal tension.

An essential element in its argument was a partial redefining of the concept of sovereignty. Rather than simply protecting the rights of sovereign states, sovereignty was viewed as a responsibility of a state to its population and to the international community. When the responsibility was unfulfilled, others had a duty to defend those being harmed, as Elizabeth Ferris explores in depth in her essay elsewhere in this collection.

Together, the JWE and this reconceptualization of legitimate intervention under the banner of The Responsibility to Protect provided the beginnings of a more coherent normative order regarding humanitarian intervention. It also left open the large question of how far such reasoning would go in legitimizing intervention for reasons beyond humanitarian concerns. That question was at the heart of the Iraq debate, where advocates for invasion appealed to all three issues discussed here: WMD, terror, and intervention.

A preventive war was undertaken on what we now know were mistaken or misrepresented grounds. The JWE does speak to these three security challenges of our day. It should not be understood, in my view, to have supported war in Iraq. But Iraq will not be the only case when these issues will be faced again.

Endnotes

1. For a historical account of the theory, cf.: James T. Johnson, *The Just War Tradition and the Restraint of War: A Moral and Historical Inquiry* (Princeton: Princeton University Press, 1981); analytical surveys include: Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books Inc., 1977); James Childress, "Just War Theories," *Theological Studies* 39 (1978): 427–453.
2. Cf.: Terry Nardin and David R. Mapel, eds., *Traditions of International Ethics* (Cambridge: Cambridge University Press, 1992); Ernest W. Lefever, ed., *Ethics and World Politics* (Baltimore: Johns Hopkins University Press, 1972); Journal: *Ethics and International Affairs*.
3. Examples of this theme include: Douglas Johnston and Cynthia Sampson, eds., *Religion: The Missing Dimension of Statecraft* (Oxford: Oxford University Press, 1994); Walter R. Mead, "Religion and U.S. Foreign Policy," *Foreign Affairs* 85 (Sept./Oct. 2006): 24–43; Daniel Philpott, "The Challenge of September 11 to Secularism in International Relations," *World Politics* 55 (2002): 66–96.
4. Frederick H. Russell, *The Just War in the Middle Ages* (Cambridge: Cambridge University Press, 1977), p. 16.
5. Cf.: Childress, "Just War Theories"; Ralph B. Potter, *The Moral Logic of War* (Philadelphia: The United Presbyterian Church, n.d.); John Finnis, "The Ethics of War and Peace in the Catholic Natural Law Tradition." In Terry Nardin, ed., *The Ethics of War and Peace: Religions and Secular Perspectives* (Princeton: Princeton University Press, 1996), pp. 15–39.
6. Childress, "Just War Theories," pp. 430–434.

7. "Aggression is the name we give to the crime of war," Walzer, *Just and Unjust Wars*, p. 51.
8. R. J. Vincent, *Nonintervention and International Order* (Princeton: Princeton University Press, 1974); Adam Roberts, "The Road to Hell: A Critique of Humanitarian Intervention," *Harvard International Review* (Fall 1993): 10–13.
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10. Cf.: Sohail Hashmi, "Interpreting the Islamic Ethics of War" and Michael Walzer, "War and Peace in the Jewish Tradition." In Nardin and Mapel, eds., *The Ethics of War and Peace*.
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