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JUS IN BELLO:

KEY ISSUES FOR A CONTEMPORARY ASSESSMENT OF JUST BEHAVIOR IN WAR

A DISSERTATION
SUBMITTED TO

THE FACULTY OF THE DEPARTMENT OF HUMANITIES

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BY

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requirements for the degree of Doctor of Philosophy in Humanities
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DEDICATION AND ACKNOWLEDGEMENTS

First, I would like to dedicate this dissertation to my God who has gifted me with rationality, insight, and a thirst for knowledge. Second, I dedicate this work to my parents who gave me both the gift of life and the morals to live with dignity, meaning, and integrity. Third, I dedicate this work to the Franciscan Order of Friars Minor and its members who have walked with me in my faith journey and illuminated the road for the journey. Finally, I dedicate this work to all those who serve this nation and the world in the armed forces, especially, the military chaplains, noncombatants who defensively risk life and limb to serve the spiritual and ethical needs of military personnel in every clime and in every level of combat.

I humbly offer personal thanks to my Administrative Assistant, Ms. Nancy Christin for her invaluable assistance in preparing this document for print. My profound thanks to the faculty and staff of Salve Regina University for providing this outstanding program. Special thanks to Daniel Cowdin, Ph.D., Eugene Lappin, FSC, Ph.D., and Heath Twichell, Ph.D., for the mentorship, academic guidance, and friendship they have afforded this student at all stages of his doctoral formation. Their patience, guidance, and inspiration will remain a template for my future academic endeavors and teaching responsibilities. May God bless each of them and keep them in his love.

Abstract

Civilized humanity has long pondered the morality of war and the parameters of just behavior in war. Since ancient times philosophers, theologians, civic leaders, warriors, and jurists have formulated concepts and theories outlining the ethical boundaries of a justified use of force (*jus ad bellum*) as well as for just behavior in war (*jus in bello*). Taken together, these principles define a *bellum justum* or just war. Just war theory, legal interpretation, and international law help to define the rationale for a just declaration of war and for just behavior of those tasked with conducting and fighting wars. This dissertation examines the relevance of just war theory for the 21st century, specifically, the relevance of *jus in bello* to contemporary issues and trends.

Following a survey of major philosophies, strategies, and personalities that have significantly contributed to the development of just war theory, the author surveys contemporary scholars who have advanced this theory. The dissertation then examines some modern issues that challenge the application of *jus in bello* principles. These issues call for further study, both external (international law and ethics) and internal (military culture, law, traditions and strategy), in defining the parameters of just behavior in war. Such issues include modern military technology (i.e., precision guided munitions and cyberwarfare), the vulnerability of non-combatants, the ethical use of military contractors, and ecological concerns. This work concludes with suggestions for further scholarship and discussion regarding just war developments.

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<u>CHAPTER ONE:</u>

Introduction

What we need to discover in the social realm is the moral equivalent of war; something heroic that will speak to men as universally as war does, and yet will be as compatible with their spiritual selves as war has proved itself to be incompatible. ---William James

As part of this doctoral investigation, this student spent hours discussing with Navy and Marine Corps lawyers the contemporary significance of just war theory and its relevance or non-relevance to modern culture, especially military culture. Three very competent lawyers, senior in rank and experience, passionately maintained that, while the just war tradition has served civilization well in the past, it no longer enjoys the status that it once possessed. They see this theory as less relevant for the countries that declare wars and the combatants who fight in these conflicts. For many lawyers, just war theory lost its relevance after the adoption of international law with its universal codification of laws, conventions, and treaties. For them, international humanitarian law has supplanted the just war theory; international law, they contend, now guides both rulers and warriors in areas once guided by theory. These legal experts pressed the point by alleging that all contemporary soldiers enter combat with clearly defined *rules of engagement* (ROE). ROEs outline what is just and legal behavior in war. International law and ethics constitute 'external' sources of just war study and discussion.

For the past twenty years this military officer and chaplain has had the privilege and duty of ministering to soldiers, airmen, marines, sailors, and coast guardsmen during

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periods of peace and war. His responsibilities have also provided a rare opportunity to study national strategy, policy, and military operations. This combination of factors parallels a line officer's appreciation for the operational and moral complexity of the challenges that military leaders must face in times of conflict. As a student at the Naval War College this researcher was required to learn the language, culture, and concerns of the line community. Consequently, he is called on to provide guidance as an ethical advisor to military commanders who must wrestle with the moral complexity of planning and fighting wars.

Having had the humbling experience of accompanying troops and their senior leaders under hostile fire, this author holds that, while useful in some combat settings, pre-arranged rules of engagement provided by operations planners and their lawyers are not adequate to answer all warriors' questions about just behavior in war. In fact, they rarely provide adequate guidance to the myriad dilemmas faced by commanders as they lead their troops through the fog and uncertainty of war. Rarely do these rules enlighten or empower either group to deal with the innate tensions that exist between military necessity (mission accomplishment) and the basic principles of proportionality and discrimination. While pre-directed rules of engagement do provide some guidance to warriors and their commanders, they are not designed to answer the complex moral questions that inevitably arise in the heat of combat. These ROEs and the general direction offered by military lawyers, as directed by the National Command Authority, do give insight into *what is legal* and expected from our warriors in conflict scenarios. They often provide little insight, however, as to *what may be right*. Doing what is right is at the heart of just behavior (*jus in bello*) in combat. Even with the aid of legal and military

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experts, the guidance given to officers and troops may still not be written with the clarity and precision necessary to provide moral direction. Therefore, the only way that warriors might hope to reconcile their responsibilities with the demands of just behavior in modern war is through thorough training in just war principles. Thus empowered, they then will be able to apply their understanding of the theory to the military tasks and objectives at hand.

Military action now spans a conflict spectrum ranging from humanitarian operations to nuclear exchanges, with all levels of military interaction and levels of force application between. To conduct war and military operations other than war (MOOTW) successfully and morally in the future, military leaders must equip their warriors and officers with sufficient operational knowledge and judgment to handle complex scenarios in diverse political, cultural, and military settings. Leaders must also train all concerned to think in ethical terms, especially in the confusion of war. Military law, culture and strategy thus constitute 'internal' sources of just war study and discussion.

The writer of this dissertation, *Jus in Bello: Key Issues For A Contemporary Assessment of Just Behavior In War*, trusts that the defense establishment will recognize the need for knowledge of just war theory as an essential component of military training and education. Although some doubt whether a moral theory such as just war is applicable to the practical dilemmas and scenarios faced by those in combat, this student believes that education in this moral background will provide warriors with decision-making tools critical to *jus in bello* behavior on the battlefield. As a result this type of moral empowering can equip warriors to succeed no matter the level of moral complexity. This recognition will provide the knowledge necessary to deal successfully

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with the complex moral issues that will confront them in modern conflicts. It is to be hoped that this dissertation will spark military discussion of the utility of just war training so as to broaden and deepen knowledge of the moral issues only partially addressed by the rules of engagement carried into war (see appendix with sample ROEs).

Like others, this chaplain has been honored to serve with outstanding young Americans who have willingly put life and limb on the line to serve their country and their world. Standing with them in conflict on three separate occasions, he has personally experienced some of the moral dilemmas faced by both troops and their commanders in combat. He thus understands that just war theory, properly taught and understood, can be a powerful tool to assist combatants in the fulfillment of their duties. Ultimately, it will aid them to complete their military mission with the honor, courage, and commitment that guides all moral combatants on and off the field of battle. This academic endeavor is dedicated to all those who willingly sacrifice their own liberties to safeguard the liberties of others, to all who are ready to lay down their lives to protect the lives of others, and to all those who are prepared to bring justice and peace to those unjustly deprived of both. Consequently, if this dissertation helps shed more light on a human technology that has protected countless generations in the past, then one of its major goals will have been accomplished. For only when the waging of war is a just enterprise can it contribute to a just and lasting peace.

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Background

February 25, 1969, Navy Lieutenant Bob Kerrey and an elite Navy SEAL team conducted a commando raid on the Vietnamese village of *Thanh Phong*. Their objective was to capture or kill enemy officials who were allegedly meeting in the village that night. Kerrey was awarded the Bronze Star for his actions in that engagement, despite the fact that thirteen civilians, including women and children were killed in the raid. Lieutenant Kerrey would eventually direct another covert raid, a raid directed at another enemy stronghold. During this second raid, young Kerrey lost part of his leg to a grenade explosion. For his bravery and sacrifice under fire he was awarded the nation's highest honor, the Congressional Medal of Honor.

Thirty-two years later, former United States Senator Bob Kerrey found himself the object of national scrutiny when another member of his elite SEAL team accused him of directing fire against innocent civilians in the *Thanh Phong* raid (Fisher 2001, 4). This accusation challenged the military record of what happened in a raid that had taken place decades ago. Kerrey's former comrade accused him of violating the principles of just behavior in war and, most notably, the principle of respecting noncombatants' lives, a potential criminal offense. He further suggested that war crimes may have been committed under Kerrey's leadership by this highly regarded and decorated SEAL unit. Many Americans were shocked at the allegations brought against this respected lawmaker, war hero, academic leader, and potential presidential candidate. This public figure, who had earned the respect and trust of the American people, had now become an

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object of public scrutiny, forced to defend his wartime record and his personal honor

decades after the Vietnam conflict had ended.

Why did the allegations receive such comprehensive media coverage and arouse

so much outrage? Traditionally, noncombatant immunity is a right afforded to all non-

participants in interstate warfare. When innocents are injured or killed in war, people

want to know why and how it occurred. They also want to know what actions will be

taken to ensure that horrors of this type can be avoided in any future war. When

accusations were made against Senator Kerrey, the American media recalled the crimes

of *My Lai* and compared Kerrey to former Army officer, LT William Calley. These

images of atrocity, which outraged both civilian and warrior alike, evoked the worst

aspects of war.

When violations of the established war codes are uncovered, no group is more

concerned or more outraged than professional warriors themselves, for these are the

individuals who must prepare for and fight our wars. Most warriors so appreciate and

honor the principles of noncombatant discrimination and proportionality that they include

them in the planning and execution of any military operation. Warriors, more than others,

tend to appreciate the delicate connection between right behavior in war and the eventual

establishment of a just and lasting peace. Understanding that violations to the principles

of proportionality and discrimination jeopardize the establishment of a "just peace," they

comprehend that violating the code of war is both counterproductive and potentially

destructive to establishing a just and lasting peace.

Civilized humanity has long pondered the morality of war and the parameters of

moral conduct in war. Since ancient times, philosophers, theologians, politicians,

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warriors, and now lawyers have formulated concepts and theories outlining the ethical

boundaries of a justified use of force in conflict (*jus ad bellum*), as well as the

appropriate, just, or legal parameters of ethical behavior in war (*jus in bello*). Taken

together these principles are critical in defining a *bellum justum* or just war. The work of

these "students of warfare" is reflected in international law, treaties, rules and

conventions, rules of engagement, and even ecclesiastical pronouncements. All of these

factors help to regulate the waging of wars and the behavior of those who must fight in

them. In brief, what is commonly described as the just war theory or tradition consists of

a body of ethical reflection on when force is justified and what behavior is just on the

field of battle.

To identify the just war theory as Roman Catholic doctrine or to view it as

specifically Roman Catholic teaching would be a mistake. In fact, the theory is a multi-

faith, multi-denominational, multi-cultural theory with application within many

traditions:

> The just-war theory is a common patrimony of Catholic, Protestant, and Orthodox
> Christians. (There are, of course, small Christian pacifist denominations.)
> Moreover, the teachings of Jewish tradition on war and peace are closely in line
> with it. Just-war theory is sometimes identified as "Catholic", and it is true that
> modern popes have explicitly invoked it and made important contributions to its
> development. It is, however, by no means uniquely Catholic. (Lopez 2001, 1)

What is the ethical challenge in creating a theory of just war? In short, the answer

is to justify the unthinkable: to provide moral justification for the killing of other human

beings. As one scholar noted recently: "We must search for ways to understand the

paradox of bringing together in a single concept the words justice and war, viewing moral

righteousness, equity and honorable behavior against the hellish images of violence,

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aggressive and irrational behavior and death" (Solomon 1996, 159). As a result, just war theory is never static; it is continually reformulated and periodically redefined to balance the ever-evolving military technology with the never-changing principle of respect for life. In short, the just war theory is a historically dynamic doctrine. It begins with the premise that war,

> ...despite its coercive and destructive character, is morally justifiable in certain circumstances and under certain limitations. Just war doctrine differs from pacifism, which denies that war is ever morally justifiable; from a holy war or crusade, in which war is seen as divinely authorized and required and in which usually there is little concern about limiting the means and scope of warfare; and from *realpolitik,* in which war is primarily a means to advance national interest. (Daly 2001, 2)

Just war doctrine is, therefore, controversial by its very nature. It encompasses a tradition that specifies when force may be used, limits the scenarios in which resorting to force is justified, and prohibits direct and intentional attacks on civilians and disproportionate "collateral" damage done by military forces during war (NCCB 1993, 4).

In essence, just war theory, which this paper will refer to as realism, must be understood as a compromise between two conflicting schools of thought: the bellicist and pacifist positions. (Strictly speaking, most modern scholars speak of realist (just war) and pacifist views of war; for most Christians reject militarism or bellicism as a credible moral response to international relations). These viewpoints bridge the philosophical gap between those who believe in the inevitability or even the desirability of war and those who never consider war as a viable option. To a large degree, this philosophical tension between the realist/just war and idealist/pacifist schools has kept the just war theory fresh and relevant. It has also maintained as focused and productive the tension among those who would use war as an instrument of national policy and those that would

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not. The tension between pacifists who espouse an ethic of non-violence and realists who hold to an ethic of just war affects both legitimate authorities who can declare war and those who must fight in these wars (NCCB 1993, 5). While their ideologies and methods may differ, the goal of each tradition is to control or limit the use of force in the world: both the violence *of* war and violence *in* war. The most recent development in just war theory concerns discussion of a just or lasting peace. This perspective recommends spending more effort to diffuse the tensions that lead to conflict while creating conditions necessary to sustain a just and lasting peace.

The goal of this investigation is not to redefine just war theory or to suggest any radical departure from current understanding of it. Rather the author aims to illustrate the following key points: (1) the just war theory still holds relevance in 21st century statecraft; (2) knowledge and application of the theory is a critical skill that will well serve combatants of today's and tomorrow's wars; (3) the dissertation will emphasize those components of just war theory that have the greatest relevance to combatants: the category of *jus in bello*. In particular, special attention will be given to the principles of discrimination and proportionality, with a short discussion as to how certain types of military technology might affect the moral decision-making process of those called to serve in the uncertainty of war.

These key points aim at empowering warriors to do not only what is legal but also what is right, thus maintaining the moral high ground that has been, for the most part, an element of our American military history since its revolutionary beginning. In sum, the author hopes to provide some guidance to warriors, and especially their senior leadership, concerning the relevance of just war theory. By presenting the major historical

developments of this theory, he wishes to help them understand today's moral challenges as illuminated by those of yesterday. Thus, this dissertation seeks to highlight the dynamic nature of the just war tradition and to empower combatants to apply lessons from past conflicts to tomorrow's struggles while remaining just and moral in any conflict where they are called to serve.

While rudimentary elements of the just war theory are found in ancient civilizations like those of the Greeks, Israelites, and Romans, scholars credit Augustine of Hippo (A.D. 354-430) with the popularization of the Christian theory of just war. In fact, by building on the foundational thought of Plato, Cicero, and the Judeo-Christian Scriptures, Saint Augustine helped define the ethical boundaries of a just war for future generations. Was Augustine's primary goal theoretical or practical, that is, creating a just war theory or defining the parameters of just war? It is the writer's opinion that Augustine was more concerned with his responsibilities as pastor than in his desire to define a just war. As bishop of Hippo in North Africa, Augustine was deeply concerned with the impact that wars had on those who must fight in them. Consider his statement on war to Faustus the Manichean:

> What is the evil in war?...The real evils in war are love of violence, revengeful cruelty, fierce and implacable enmity, wild resistance, and the lust of power, and such like; and it is generally to punish these things, when force is required to inflict the punishment, that in obedience to God or some lawful authority, good men undertake wars... (Augustine cited by Paolucci 1962, 164).

Augustine and the just war theorists who succeeded him would probably argue that the categories and principles of just war are important for a number of reasons. These reasons, which remain critical for maintaining peace and justice in the 21st century, include: 1) the doctrine guards against unjust conflict in the world, 2) it offers moral

guidance to those who plan or fight in wars, 3) it insists that the goals of every just war

(the establishment of a just and lasting peace) be paramount and eventually met, and 4) it

helps warriors retain their ethical focus and humanity in one of the most stressful,

dehumanizing, and spiritually dangerous situations of their lives. In essence, the just war

theory promotes a humane focus and ultimately seeks to establish or restore peace with

justice on earth.

Why do we need a theory of just war in an era of international law? A brief look

at the history related to this question may shed light on the question. After our colonial

war for independence, American diplomats met with representatives of the Kingdom of

Prussia to establish a fair treatment of combatants who could no longer fight. In the 1860s

Henry Dunant and some of his fellow Swiss citizens, concerned about the treatment of

wounded combatants at the Battle of Solferino in North Italy (1859), met to organize

what eventually became the International Committee of the Red Cross. A few decades

later, Russia's Czar Nicholas II questioned the morality of using certain armaments and

asked whether their use could be considered humane, even in war. All these initiatives set

in motion the establishment of international humanitarian law in the 19th and 20th

centuries.

The world's first international rules of war were established through Geneva

Conventions (1864, 1906, 1929, 1948, and 1949) and International Peace Conferences

held at The Hague in the Netherlands (1899 and 1907). These agreements and

conferences defined the roles and rights of combatants as well as non-combatants,

provided guidelines for the protection of prisoners of war, and offered proposals for the

monitoring of combatant behavior in war (ICORC / Red Crescent 2000). These

mechanisms for a modern code of war did not evolve spontaneously from the brilliance of a few statesmen, the seminal thoughts of a few lawyers, or the conscience of Henry Dunant. These were a series of steps in the evolution of just war theory.

And so, well before either of the World Wars, countries of the world had ratified many international treaties, laws, and conventions designed to limit or avert wars, while monitoring and limiting the behavior of combatants in war. Despite these pre-war advancements in international humanitarian law, scholars estimate that tens of millions of noncombatants were killed or seriously wounded in World War II: "In wars of the 18th, 19th, and early 20th centuries, only about half of the estimated victims [of war] were civilians. In World War II, the ratio rose to two-thirds (MacCormack 1999, 3). Since so many victims of these global wars were innocent civilians it may said that international law did little to protect these innocents in the course of the war. Charles MacCormack writes that international law and international humanitarian law did little to ensure just behavior in war (*jus in bello*), legal guidelines that should have protected millions of innocents. What's even more regrettable is the number of children that were directly or indirectly impacted by these wars, the high number that killed or perished in war.

Prior to the war crimes tribunals of World War II, few military persons or government officials were tried for such crimes. After this horrific war, statesmen, warriors, and even physicians were indicted, tried, and convicted of crimes against humanity. Some were even executed for their heinous behavior in wartime. Besides addressing the justice of conduct during this war, both the Nuremburg (Germany) and Tokyo (Japan) War Tribunals addressed the morality and justice of going to war (*jus ad bellum*). The world community's most recent war crimes tribunals in The Hague (The

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Netherlands) have addressed crimes against humanity in the Rwandan and Bosnian conflicts.

The slaughter of millions during the war weighed heavily in the minds of delegates as they attended conferences to establish a United Nations at the end of the war in 1945. Delegates wrestling with the horror of warfare, and its destructive effects on humanity as a whole, pondered the utility of war to resolve inter-state conflict. They wondered whether an organization or some other international coalition of nation-states might be effective in diffusing the interstate crises of the future, and whether such an organization might be given the power to diffuse these inter-state tensions before they ended in bloodshed.

To the astonishment of many, world leaders were successful in creating a United Nations. They were also surprised that, despite the horrors experienced in two relatively recent world wars, delegates decided not to prohibit countries from using force if the use of force was just. Delegates therefore left open possibility of using force for any nation-states attacked by aggressor nations. Like others before them, in other words, United Nations delegates recognized the existence of a just war principle, a tradition that had been handed to them after millennia of development in the just war tradition. These war-weary delegates affirmed a nation's right to protect and defend itself and its sovereignty in Article 51 of the United Nations Charter.

Richard Regan (1996) points to Article 51 of the UN Charter as an example of moral reflection on the justified use of force in upholding a nation's right to defend itself. The article addresses a country's right to oppose the aggressive actions or force of a hostile adversary: "Nothing in the present Charter shall impair the inherent right of

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individual or collective self-defense if an armed attack occurs against a member of the United Nations..." (Simma 1994, xxviii). Article 51 touches the core of an ethical and philosophical question that has been debated since ancient times: when is it morally justified to use force? It is important to note that "...the UN charter contains only two exceptions to prohibiting the use of force, namely Security Council enforcement actions... and the right to individual and collective self-defense laid down in Article 51" (Simma 1994, 663).

During the 1950s, 1960s, and 1970s, institutions like the Christian Churches placed great hope in the United Nations' potential to help stabilize international relations and halt the use of force in international relations. Cold war rivalries and politics sometimes impeded the progress of the United Nations in its attempts to build international peace and avoid war. After the breakup of the Soviet Empire (1991) and the collapse of the bipolar world, some predicted progress in this area, with the advent of a new era of peace. Further, they expected internationalism, especially its premiere expression, the United Nations, to factor more significantly in the world political arena. Unfortunately, these expectations have, for the most part, gone unrealized. According to political theorist Hans Morganthau (1993), incidents of interstate and intrastate warfare have, in fact, increased. Recent discussions about whether the United States and its allies should intervene militarily in Iraq have once again highlighted a potentially significant role for the United Nations in keeping the peace. Unfortunately, many are not convinced or enthused as to its ability to affect any real change in the international climate.

Regardless of the success of the U.N. in preventing armed conflict, the just war provision about avoiding harm to noncombatants has always played a critical role in this

process. Whenever contingency plans are drafted, discrimination of civilians is always accorded a high priority, and the potential for collateral damage is always factored into the equation. Modern planning for war, as well as the subsequent fighting, demands specialized preparation. Military leaders strive to provide troops with timely professional training, equipment, and strategy so as to empower them to complete their military mission. Unfortunately, although training and instruction in the ethical conduct of war are often neglected, ethically just behavior in war is often the most challenging component of military activity. *Jus in bello* or just behavior in war, requires more than the good will of well intentioned warriors; it demands that these war-fighters receive specialized training in how to be moral in war. Moreover, rules of engagement, while necessary, provide warriors with only partial knowledge of this aspect of war.

The ethical conduct of warriors on the battlefield is significant in any formula for a just and lasting peace. To ensure that warriors understand their ethical responsibilities in gaining the military objective and achieving the post-conflict goal of establishing a just and lasting peace, they must understand the nature of just war principles, not just the standard rules of engagement (see appendices). Every potential combat requires careful orientation and training, which all soldiers, sailors, airmen, marines, and coastguardsmen should receive regardless of their rank or responsibility.

Discriminating between combatants and noncombatants is a significant dimension of war planning. Knowing how and why it is necessary to discriminate in such matters ultimately provides politicians and warriors with a technology that might ultimately save life and achieve an acceptable peace in the post war stage. Given the changing nature of statecraft, humanitarian intervention, and military technology, as well as the catastrophic

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deaths of millions upon millions of innocents in the various wars of the 20th century, one of the goals of this dissertation will be to highlight the role of combatants or warriors in noncombatant discrimination / immunity. The aim of this academic effort is to fuel further discussion among the warriors themselves so that theoretical principles are given life on the field of battle.

Besides including a brief overview of the historical development of the key concepts of just war theory and discussing the relevance of the principles of discrimination and proportionality, the author will demonstrate how changes in technology and military praxis necessitate the need to identify and explore key contemporary issues pertaining to *jus in bello*. The author plans to engage both the external (international law and the study of ethics) and internal (military law, culture, traditions and strategy) dimensions of the just war theory in the discussion of these critical issues affecting a contemporary understanding of just war theory. The qualitative approach to this topic utilizes historical development and current issues to highlight the most important facets of the thesis. Contemporary just war theorists, Roman Catholic magisterial teachings and pronouncements, and numerous articles or books relating to this topic are all utilized in this investigation.

Structure of the Dissertation

Following this introductory chapter, Chapter Two will provide an historical overview of the evolution of some elements of the just war theory. Specific attention will be given to a category of the theory, *jus in bello,* which is of great relevance to those who

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must fight in armed conflict: today's warriors. The overview begins with a brief study of the evolution of just war principles beginning with some of humanity's earliest civilizations. Since ancient civilizations factor significantly in the western development of just war thought, a short survey of their history and tradition will be provided in relation to just war foundations. Next, the chapter presents some of the most important influences on just war thought. Special emphasis is placed on notable civilizations like the Persians, Greeks, Israelites, Romans, and Muslims, once again, focusing on developments in *jus in bello* principles and illustrating how they might apply to a warrior's understanding of just war.

The chapter will next examine Christian roots in the development of just war, with special focus on the Christian Scriptures, as well as on those Church Fathers and all "those of good will" who significantly affected just war thinking and post-apostolic leaders. This examination of the philosophical tensions regarding war and a Christian's participation in war during the era of the Early Church is intended to illuminate these same philosophical and theological currents as they exist in the church today. The tensions between Christians of a realist and idealist mindset must be viewed as a healthy one. The dynamic dialogue between the two factions keeps thoughtful persons focused on living justly while meeting the demands of citizenship in the modern world. This same tension, incidentally, challenged the moral principles of young Augustine, inspiring him to develop a methodology for building the city of God while living in the city of men. This human compromise or synthesis factored significantly in the evolution of just war theory and in many of Augustine's writings.

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Although elements of the theory were formulated centuries before his birth, Saint Augustine of Hippo (354-430) is often credited with the codification of just war thought and is therefore referred to as one of the fathers of just war; in fact, Saint Augustine is often called *the* father of modern just war theory. Augustine's writings will be examined to highlight the nature of his thought and the seminal contributions he made to both the evolution of just war theory and the role and responsibilities of Christian citizenship in the world.

The Al Queda Movement and the attacks of September 11, 2001 highlighted the importance of Islam in contemporary international relations. Since Islamic thought significantly impacts the history of the East and West, and especially in current events, a general overview of Islamic thought as it pertains to war and peace will be presented in this historical overview. Chapter Two then moves to a discussion of the medieval church and its contributions to the advancement of just war theory. Particular attention will be directed to the "Peace of God" movement and its attempts to limit warfare, guide the behavior of combatants, and control the armaments used in war. This ecclesial movement also contributed to the protection of noncombatants, including clergy and religious, while structuring timeframes for combat to ensure time for the planting and harvesting of crops.

Study of the medieval developments of just war theory will conclude with a brief examination of one of Western Civilization's most important contributors to just war theory and the Christian Church's understanding of war and peace, namely, Saint Thomas Aquinas. The discussion then moves forward a few centuries to the 15th century, where the "modern" era of international politics coincided with the emergence of the nation-state. At this time, innovative thinkers like Hugo Grotius and writers of the later

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scholastic period contributed to just war theory. This historical epoch witnessed the decline in church influence and the rise of international politics and law. These factors contributed significantly to the development of just war theory, a theory that was greatly secularized. Attention shifted from the institutional church and its ecclesiastical leadership to heads of state and ministers of foreign affairs.

Modern coverage of the theory begins and ends with an examination of the creation of international tribunals, conventions, and treaties. Eventually, inter-state organizations were created to diffuse international tensions, avert war, and build structures to ensure a just and lasting peace. Finally, this chapter will briefly cover the development of the internationalist movement with special focus on the United Nations and its Charter.

Chapter Three will introduce some critical contributions to our contemporary understanding and application of just war thought and theory. The significant works of selected contemporary writers are examined for relevance and timeliness. Each of these authors has contributed significantly to contemporary relevance of just war theory, and their scholarship is crucial to grasping current trends and developments in this area. This dissertation is certainly not presented as a bibliographical survey of just war theory. Given the thousands of scholarly contributions, both past and present, that would be a stand-alone project in itself. Nevertheless, the extensive bibliography offered at the end may offer suggestions for further scholarship or research by those desiring more in-depth coverage of any topics or points presented in this dissertation.

The contemporary authors whose contributions are offered for study and consideration include J. Bryan Hehir, James Turner Johnson, Richard Regan, Michael

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Walzer, William O'Brien, Paul Ramsey, and Drew Christiansen. Other contributors are presented in the last paragraphs of the chapter. In light of its historical contributions to just war theory and prominence in any contemporary just war discussion, Chapter Three will conclude with a short survey of modern Roman Catholic social thought and teaching on the topic of just war. This study will include a survey of papal pronouncements and Council documents from a premiere 20th century ecclesiastical event: The Second Vatican Council. The chapter concludes with the controversial yet enlightening contributions of the American Catholic Bishops Conferences, particularly their two pastoral letters: *The Challenge of Peace: God's Promise and Our Response* (1983), and *The Harvest of Justice is Sown in Peace* (1993). Both of these documents have had a profound impact on the discussion of just war theory, especially within the American Catholic Church.

Chapter Four focuses on current understanding of just war theory. This chapter presents the critical components, divisions, and criteria of modern just war theory, as well as some developing concepts that may gain institutionalization as they grow in popularity among theorists. Discussion begins with an examination of the key components of the first category of just war theory, *jus ad bellum,* and the criteria used to determine when the use of force is moral. The presentation then proceeds to an examination of the second category of the theory, *jus in bello.* Here its principal criteria, proportionality and discrimination, will be analyzed as the primary guidelines for just conduct in war. *Jus in bello* is the critical factor or the foundation of the discussion of just war for warriors. Any contemporary examination of issues influencing just behavior in war must begin with an understanding of the criteria that critically affect the way they accomplish their military

mission and whether they will be ultimately successful in the subsequent establishment of an armistice and peace.

Finally, this dissertation examines a category that some describe as a separate category of just war theory: justice after conflict or *jus post bellum*. If nations hope to establish a just and lasting peace in the post-fighting stage of war, decisions regarding armistice and the treatment of the defeated must be just. To ensure a just and a lasting peace, in other words, the goals of war must allow for recovery of defeated nations and their gradual re-entry into the regular affairs of the community of nations.

Since this study focuses significantly on the just war concerns of warriors, Chapter Five touches on some contemporary challenges that strongly affect combatants' understanding of *jus in bello*, especially their implementing the criteria of discrimination and proportionality in the complex conditions of combat. Specific attention is given to the principle of discrimination and the *jus in bello* responsibilities of modern warriors. Some of the technologies include precision-guided munitions and cyber-warfare, sometimes referred to as information warfare. For instance, we must ponder whether "smart" munitions are more humane since they allow us to discriminate in targeting our weapons. Do they carry unforeseen consequences, such as "revenge-effects" as described by Edward Tenner in *Why Things Bite Back*?

The chapter discusses the world's most vulnerable victims in time of war: children. It also considers an emerging class of individuals who are not, legally speaking, combatants, yet who stretch the concept of noncombatant immunity. They are military-related civilians referred to as military contractors. Should military contractors or Department of Defense civilians who operate, maintain, or repair weapons systems be

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linked legally with other noncombatants? This question particularly concerns civilians in conflict scenarios and military contractors who assist warriors in the conduct of warfare. Should they be considered combatants or given some other status reflecting their offensive combatant capabilities? Examination of this critical question may shed light on the future employment of contractors in combat and how this category of employees ultimately affects our understanding of noncombatant discrimination. As was shown at the end of Desert Storm (1991), since nature is often war's unprotected victim, the environment needs to be linked to the principle of discrimination. Preservation of the environment deserves closer scrutiny by those who plan for war and those who fight in war.

Finally, Chapter Six offers the author's reflections on several factors affecting a contemporary understanding of just war. Aided by some philosophical, theological, and military science references, the author examines some current reflection on the relevance of just war principles, specifically for the combatants who may be called to fight in tomorrow's conflicts. The chapter looks particularly at the tensions experienced by commanders seeking to accomplish their military mission while remaining ethical in the performance of their responsibilities. For example, they must simultaneously protect their troops and noncombatants in a theater of war. What happens when America's National Command Authority places higher value on the lives of its warriors than on those of the noncombatants in the war zone? Should warriors assume greater risks to their own safety and survival because they have assumed the role of a combatant, a view suggested by Michael Walzer?

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The chapter concludes with several questions about the current status of just war theory addressed to a traditional leader in the development of this theory, namely, the Roman Catholic Church. Are church leaders shifting their focus away from a traditional just war theory to a new theory of *just peacemaking* and *just intervention*? How will these ideological shifts potentially affect the theory and those who employ it? What are some of the key theological and philosophical principles that may significantly influence future considerations of the just war?

In sum, this dissertation is intended to spark future research and discussion of just war theory, especially how that theory affects the combatants who must fight in wars. These warriors have to employ the principles of the just war theory on any field of battle, be it the sands of Iraq or the urban confines of New York. This research aims to spark more interest in a theory that was designed to restrict conflict, save lives, and establish a just and lasting peace. Most importantly, as a pastor to warriors, this researcher hopes that his efforts may contribute to knowledge that will empower warriors to retain their humanity in the midst of the world's most inhumane endeavor: war.

> One of the most commonly words used in Hebrew is *shalom*, traditionally translated as "peace." *Shalom*, however, is more than just the absence of war or conflict; it is a condition of justice, prosperity, and peace. For that reason it has also been suggested that *shalom* implies a state of security: '...[*S*]*halom* is part of the etymological root of the Jewish word for 'impregnable fortress' or '*Yeru shalom*', better known to most as 'Jerusalem.' (Johnson 1999, 3)

Americans now seek that condition of justice, peace, and security as they move to check the growth of international terrorism, a threat that has radically challenged our traditional sense of national security. To shed light on the applicability of just war theory in this current crisis is thus to provide moral guidance and insight to those who may be

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called to fight in this tenuous international climate. Providing such moral-ethical insight

is a primary responsibility of every military chaplain.

CHAPTER TWO:

HISTORICAL SURVEY OF MAJOR ORIGINS AND TRENDS IN THE DEVELOPMENT OF JUST WAR THEORY

The enemy boasted, 'I will pursue and overtake them; I will divide the spoils and have my fill of them; I will draw my sword; my hand shall despoil them!' Exodus 15: 9

With his epic novel, *Roots,* Alex Haley inspired Americans from many racial and ethnic backgrounds to research genealogies and find their roots. According to Haley, knowing one's roots is a critical component in understanding oneself. Similarly, it is important to know the etymology of a word, or the evolution of a theory in order to fully comprehend its meaning. Knowing a term or theory's origins may assist us in knowing how it may evolve in future iterations. Such knowledge can shed light on its past, highlight strengths and weaknesses, and provide insight on its development. Thus empowered it may help us with future trends, challenges, or to shape its future. This study of just war begins with a short survey of the most significant developments in a tradition that has evolved through numerous civilizations, philosophies, theologies, personalities, and political structures. While far from comprehensive, this survey will provide a sampling of some of the most significant trends, issues, challenges, and contributions of the just war tradition.

Chapter Two is a historical survey that covers almost three millennia of history. To assist readers as they delve into the chapter, the following synopsis is offered to guide their efforts and highlight the major historical epochs they will encounter. The survey begins with the historical account of a Sumerian battle and it is included in this study as

an example of warfare without limits, a conflict scenario sometimes described in contemporary terms as total war. Total war is the absence of all moderation and limits or control of warfare, an example of the horrors of uncontrolled or regulated warfare; it is therefore a picture of warfare *before* the advent of just war principles or theory.

Some ancient civilizations moved beyond total war and began to address the inhumanity of war. They placed limits on when war should be declared, against whom war should be declared, and how warfare should be conducted once initiated. The elementary principles of just war surface in some of the ancient world's most prominent civilizations, civilizations such as the Assyrians, the Persians, the Israelites, and the Greeks. The great leaders and thinkers of these civilizations gave birth to concepts like the discrimination of noncombatants, the proportionate use of force, the humane treatment of captives, and the just ends of war.

The codification of just war is attributed to the Roman Empire, and especially, to the philosopher Marcus Tullius Cicero (106 - 43 B.C.). One of the empire's most significant developments was the foundation and propagation of Christianity. Because much of the theory of just war is attributed to Christian philosophers and theologians, Christianity is given extensive coverage in this dissertation. The struggles of the early church to reconcile the pacifistic teachings in the Christian scriptures and the demands of citizenship in the Roman Empire are reflected in the schools of pacifism and realism. This tension is reflected in the writings of the early Church Fathers as they struggled to reconcile the demands of Christian discipleship with those of Roman citizenship. Building on the foundations of the ancient civilizations, and utilizing the philosophy of Cicero, Augustine of Hippo proposed a compromise solution, one that factored in the

Christian's obligations to both the city of God and the city of man; this compromise is called the just war theory. Following the historical timeline, the dissertation moves to a study of Islam and the Muslim concept of just war. Given the current state of international affairs, the author felt that any contemporary treatment of just war would be well served by an historical treatment of Islam and just war.

The power and theology of the Roman Catholic Church dominate western statecraft and the evolution of just war theory in western thought from the fifth through the seventeenth centuries. The medieval Church addressed the evils of warfare in the Peace of God movement, one of the first historical movements to direct *when* war could be waged (*jus ad bellum*) and *how* war should be fought. The Church went so far as to condemn the use of certain types of weaponry such as the crossbow. One of the most influential just war theorists in history is Thomas Aquinas, a theologian and philosopher who helped usher in the scholastic era of the church. A few centuries later, during an era labeled the late scholastic period, Francisco Vitoria and Francisco Suarez built on just war theories of the past and codified the theory into a structure that is easily recognizable today, most notably, the major categories of *jus ad bellum* and *jus in bello*. Just as important, their insights into the inter-relatedness of nations provided Hugo Grotius food for thought in his development of a theory of international law. As the primacy of Church teaching and influence waned and more importance was placed on the sovereignty of nation-states, international law gradually upstaged canon law, philosophy, theology, and the influence of the Roman Catholic Church and its leadership.

The modern era of just war theory is marked by the development of international treaties and laws. The Lieber Codes and the Geneva and Hague Conventions of the

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nineteenth century are prime examples of the codification and internationalization of just war principles. International organizations such as the Red Cross were eventually established to monitor compliance or non-compliance with these war conventions. Following the horrors of global conflict, the world community decided to create an international forum to address inter-state tensions before they evolved into conflict. Although the first organization, the League of Nations, failed to avert world war, it became the precursor for the United Nations. This organization has codified just war principles in its charter. It is committed to creating proactively the conditions necessary for the establishment and sustenance of a just and lasting peace for all nations and peoples of the world. With that as an overview, we now begin this brief historical survey of the major trends, developments, and personalities of the just war tradition.

Ancient Civilizations:
A Record of Violence

> Forty percent of human skeletons recovered in the Egyptian Nubia, dating some 12,000 to 14,000 years ago, showed evidence of violent death by lethal instruments. Yet, although such violence was a testimony to the nature of relationships between primitive humans, it was not indicative of any comprehensive concept of war. The rise of organized society is the key to differentiating between wanton violence perpetuated by marauding nomads and states at war. (Johnson 2001, 1)

Violence has been an unfortunate component of our human experience since time immemorial. "One of the clearest conclusions emerging from a study of the distant past is that human nature, in all the time we have record of it, has changed very little, if at all" (Hackett 1989, 7). For example, the first chapters of the book of the Judeo-Christian Scriptures, the Book of Genesis, begin with God's creation of the universe, move to the creation of the Garden of Eden, describe formation of the human race, and extol

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humanity's short-lived pre-Fall existence. Within the space of a few chapters, these same scriptures record humanity's fall from grace, its banishment from Eden, and its first act of intra-species violence, the murder of one brother by another: fratricide.

Cain's murder of Abel (Genesis 4:8) suggests that one person's use of force against another has been an unfortunate component of human behavior for millennia. In some instances, men used force against other men in a defensive manner, but at other times, force was used offensively; either way, the use of force had the same results: the loss of human life.

While human history records incredible achievements and advances, it is also replete with episodes of violence, bloodshed, and tribal or interstate warfare. In this sense history records how poorly societies dealt with the tensions, rivalries, jealousies, and conflicts that often resulted in war. This chapter does not intend to capture all developments within the evolution of just war tradition; rather, it is an attempt to present some of the more important advancements and contributing personalities affecting the development of the theory of just war.

The Sumerian Civilization

King Eannatum ruled the city state of Lagash sometime between 2500 and 2400 B.C. One of the only remaining artifacts of his Lagashite Civilization is a famous stone monument that archeologists call the *Vulture Stele*. As with other historical artifacts from Sumerian culture, "The battles pictured on Sumerian monuments and described in royal inscriptions were caused by squabbles between neighboring cities about irrigation, or by raids of barbarian tribes from the mountains of Persia in the east and of desert nomads in

the west" (Garraty and Gay 1972, 60). The *Vulture Stele* depicts the military exploits of

Eannatum's army, and the battle scene etched on the artifact is one depicting the horrors

of total, unconditional warfare, war fought without limits.

After Eannatum's battle, the broken and lifeless bodies of enemy soldiers, left

unburied on the battlefield, were eventually consumed by nature's scavengers, the

vultures. Historians surmise that King Ennatum's military campaigns were conducted to

expand Lagashite boundaries, while his ultimate military goal was the total subjugation

and defeat of his enemies. The earliest recorded history of interstate warfare, therefore, is

one depicting total war. Such conflict is fought without ethical boundaries, conducted

without the goal of establishing a just and lasting peace, and waged without any just war

principles. It is a war directed towards the total devastation of a people, culture, and quite

possibly, a civilization. One might ask: what significance does this example of total war

have in the development of the just war tradition? The horrors of total war here illustrate

why ethical limits, such as those found in the just war theory, need to be placed both in

the declaring of wars and in the subsequent fighting of those same wars.

The Assyrian Civilization

The great Assyrian Empire dominated the territory and politics of the ancient

Near East from 900 to 600 B.C. With much of their terrain surrounded by mountain

ranges on its northern and eastern flanks, the Assyrians were attracted to the more fertile

lands of their neighbors. Assyrian expansion targeted not only its neighbors, but also

whole geographic regions and ancient civilizations, including that of the Israelite Nation.

Assyrian leaders began a military campaign of conquest and political domination that lasted almost three centuries. These campaigns, conducted mainly between the ninth and seventh centuries, led to the conquest of Syria, parts of Egypt, Asia Minor, and, as recorded in the historical books of the Judeo-Christian scriptures, the Northern Kingdom of the Israelites. The Second Book of Kings relates one famous story of Assyrian expansion: "In the ninth year of Hoshea [King of Israel], Shalmaneseer [son and successor of the great king, Tiglath-Pileser], the King of Assyria, took Samaria and deported the Israelites to Assyria, settling them at Halah, at the Habor, a river of Gozan, and in the cities of the Medes" (2 Kings 17:6).

The Second Book of Kings tells a story of total war. The story begins with a three year siege of Samaria, the capital of the Northern Kingdom, and ends with the total defeat of the Israelite army, followed by the deportation of its people and the suppression of the Israelite culture and religion. "Assyrian methods were harsh, designed to inflict a lesson of frightfulness" (Haskett 1989, 36), especially on those who refused to surrender. Noncombatants unlucky enough not to have evaded the Assyrian army were either killed, sold into slavery, or deported. Their villages were pillaged, and their crops destroyed. Those who bowed to Assyrian demands and eventual domination were required to pay financial tribute and forced to sign a treaty compelling them to accept Assyrian rule, culture, and political sovereignty.

Cities resisting Assyrian aggression were put under siege, forced to endure starvation, disease, and even cannibalism. Once captured, they were destroyed. The men were killed while women and children were either killed or forced into captivity. Around 605 B.C., however, the capital of Assyria, Nineveh, was conquered and destroyed by the

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Babylonians and Medes, forcing Assyria to become a vassal province. Despite its severity, Assyrian civilization exhibits a tempering of the concept of total war, and the rudimentary development of some *jus in bello* principles. Towns, cities, and civilizations electing to obey Assyrian demands of submission were treated more humanely than those who resisted these aggressors. Surrender was encouraged and those who capitulated were allowed to live, albeit in slavery. While this development in the law of war appears to be relatively minor, it does show some elementary tolerance toward an enemy with the willingness of an aggressor to extend certain limited rights to the nations capitulating to Assyrian aggression. It may be argued that the Assyrians offer a first glimpse of limited war.

The Persian Civilization

At the height of its power, the Persian Empire was expansive in both territory and influence. Persian influence stretched from the shores of the Aegean Sea to the banks of the Indus River. Depending on the character of its leaders, Persia was sometimes a ruthless victor, but at other times it exhibited enlightened policies, treating conquered nations or territories with restraint, compassion, and political savvy. One example of this compassion concerns Israel.

The people of Israel, who had been defeated by the Babylonians, remained in their captivity until the Persian conquest of the Babylonians. Cyrus II, sometimes called 'Cyrus the Great' founded the Achaemenid Empire of the Persians in 559 B.C. After this conquest in 538 B.C., one of its more enlightened kings, Cyrus the Persian, gave the Israelites permission to return to their native land and rebuild their society. By the time of

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his death around the year 529 B.C., he ruled an expansive empire that stretched through most of Asia Minor (Dupuy and Dupuy 1993, 37).

The Hebrew Scriptures praise Cyrus for his enlightened treatment of the Israelite people. In fact, the Book of Ezra accords Cyrus the status of a biblical hero. He is mentioned a number of times there, most notably in II Chronicles and in the 44th and 45th chapters of the Prophet Isaiah. In Isaiah, Cyrus is described in Messianic terms as he is referred to by Israel's God as "my shepherd." This "shepherd" is given another title by the Israelites, that is, as an instrument of God. And so the Jewish people treat Cyrus as a blessed ruler who, hand-picked by God to carry out the divine plan, frees the Chosen People of Israel. Nowhere is this interpretation more evident than in Ezra:

> In the first year of Cyrus, king of Persia, in order to fulfill the word of the Lord spoken by Jeremiah, the Lord inspired King Cyrus of Persia to issue this proclamation throughout his kingdom, both by word of mouth and in writing: " 'Thus says Cyrus, King of Persia: 'All the kingdoms of the earth the Lord, the God of heaven, has given to me, and he has also charged me to build him a house in Jerusalem, which is in Judah. Whoever, therefore, among you belongs to any part of his people, let him go up, and may his God be with him! Let everyone who has survived [the Babylonian Captivity], in whatever place he may have dwelt, be assisted by the people of that place with silver, gold, goods, and cattle, together with free will offerings for the house of God in Jerusalem'."(Ezra 1:1-4)

Scripture writers paint a highly favorable portrait of Cyrus as an enlightened political ruler anointed by God. Cyrus was revered as a benevolent and wise ruler because he allowed the Israelites to return to their homeland and rebuild their nation as an ally of Persia. They returned home to their devastated country, reinstated their religion, and gradually rebuilt in their capital their venerated holy place, the Temple of Jerusalem. Under the wise rule of Cyrus the Great, Israelites could live in peace and prosperity. Not all nations and peoples fared as well as Israel. In 490 B.C. one of Persia's less enlightened rulers conquered and razed the city of Eritrea on the Red Sea. Little mercy

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was extended to its inhabitants. This slaughter shows an absence of continuity of leadership in the governance of Persia, the lack of a codified or standardized approach to war, peace, and rule of defeated nations.

The Persians, especially under the enlightened rule of Cyrus, offer a critical contribution to the evolution of just war theory, for they teach us the significance of going to war with an ultimate goal, namely, establishing a lasting peace benefiting both the victor and the vanquished. In the case of Cyrus, whether such was his original goal in attacking Babylon, we find a template for enlightened leadership. By allowing the conquered Israelites to return to their homeland, the Persian ruler restored the Israelites to their homeland, secured their border, created a loyal ally, and gained the admiration of a people who just as easily could have become his enemy. In sum, Cyrus exhibited great mercy, wisdom, and enlightened leadership rarely seen before his time, qualities that would influence development of the just war theory.

The Israelite Civilization

Blessed be the Lord my rock, who trains my arms for battle,
who prepares my hands for war. --- Psalm 144: 1-2

From its Abrahamic beginnings and captivity in Egypt, through the Exodus and occupation of the Promised Land, to its Davidic dynasty and eventual exile in the captivity in Babylon, the history of Israel is a record of war, occupation, and the use of force in the name of God. For the early Israelites, war assumed a sort of religious dimension whose character dates back to the earliest days of the Israelite civilization.

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The Israelites linked their national destiny with the will of their God, Yahweh. As one biblical scholar notes: "The Old Testament recounts war after war, genocide, ethnic cleansing, rape, plunder, and a host of other atrocities associated with war. Indeed, on many occasions the Hebrews were instructed by Yahweh, or Jehovah, to do these things" (Johnson 2001, 3). Israel's conquest of the Promised Land was viewed as Yahweh's war of conquest, a holy war that was not only condoned by Yahweh, but *commanded* by Yahweh. The Israelites' early wars were viewed then as Yahweh's wars, and we see these wars recorded in the voice of Moses to God's people: "After I had spent these other forty days and forty nights on the mountain, the Lord had once again heard me and decided not to destroy you. He said to me, 'Go now and set out at the head of your people, that they may enter in and occupy the land which I swore to their fathers I would give them'" (Deuteronomy 10: 10).

Yahweh was worshipped as a personal God, a deity who did not hesitate to get involved in the daily, political, and even the military lives of his Jewish people. From this perspective, no dimension of Jewish life was too small or insignificant for the Creator. Therefore, both the national agenda of Israel and the everyday lives of its people were important to their God. So, when the people of Israel needed the assistance of their God, they turned to God and prayed for their deliverance: "Hear the word of the Lord, O nations, proclaim it on distant coasts, and say: 'He who scattered Israel, now gathers them together, guarding them as a shepherd does his flock. The Lord shall ransom Jacob, redeeming him from the land of his conqueror' " (Jeremiah 31: 10-11). Hebrew Scriptures go so far as to portray God as a military commander, a powerful warrior who

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was personally willing to conduct Israel's military campaigns against enemies and oppressors:

> Behold, I will deliver you from the far off land, your descendants from their land of exile; Jacob shall again find rest, shall be tranquil and undisturbed, for I am with you to deliver you. I will make an end of all the nations among which I have scattered you, but of you I will not make an end. I will chastise you as you deserve; I will not let you go unpunished. The anger of the Lord will not abate until he has done and fulfilled what he has determined in his heart. (Jeremiah 30: 10b-11; 24)

In this theocratic stage of Israel's history, her battles were thus Yahweh's battles; her wars were God's wars. These wars were viewed as holy wars, not mere military campaigns, and therefore Israel looked to God as the person ultimately in charge of their history, destiny, and even their wars: "And who is this king of glory? The Lord, strong and mighty, the Lord, mighty in battle" (Psalm 24: 8)

Jewish scholar Reuven Kimelman, who has researched Israel's wars, places them into specific categories. Describing Israel's wars as either mandatory or discretionary, defensive or expansionary, Kimelman uses these categories to help define the just or unjust nature of these national wars (1991, 309). For Kimelman, then, Israel's wars fall into two categories: either aggressive wars or defensive wars. Incidentally, these are the same contemporary categories used to determine whether or not a nation has just cause to wage war.

Another scholar summarizes this viewpoint as follows: "Thus, a just war was one fought either to deliver or to protect the Jews from hardship and evil. Therefore, God's war against the Egyptians (i.e., one of deliverance or hardship) or Joshua's wars against the population of Canaan (i.e., for fulfillment of the deliverance) were never subject to

moral scrutiny" (Lubling1991, 2). This judgment implies, of course, that other wars were morally suspect, and Israel paid dearly for such aggression. When defeated, the Hebrews believed that they had suffered the defeat as a divine punishment or chastisement for their unfaithfulness to God's covenant with his people. This evil was brought on by the disobedience or unfaithfulness of Israel's leaders, its people, or both. And so, Israel saw the will of God in both its victories and its defeats:

> The Bible ... contains countless examples of divine punishment. The Book of Judges, for example, is filled with verses such as this: 'The Israelites again offended the Lord who therefore delivered them into the power of the Philistines for forty years ' (13:1). (Higgins 1991, 52)

Although the early Israelites conducted many of their military campaigns with the understanding that they were fighting under God's mandate, this link did not mean that Israel enjoyed a blemish-free history, that all her wars were just, or that God blessed all her wars. For the Israelites, "...when war was conducted under God's command, it was usually fought for the vindication of justice and the restoration of peace" (Johnson 1999, 3). Given its location in the land-bridge linking the continents, war was an important dimension of Israelite life:

> War was viewed in the biblical period [of Jewish thought] as an inevitable part of life and an accepted result of living in an imperfect world. This can be seen in the very word used in the Bible for war, i.e., *milchama*, which is linguistically derived from the root le-ch-m, from which the word lecham [bread] is also derived. Conceptually, then, as bread historically symbolized the very basic necessity of life, so does the activity of war. (Lubling 1991, 1)

Since war played such a critical role in the life of the Jewish people, it should come as no surprise that their scriptures offer extensive guidance concerning war and even conduct in war. The Israelites were in many respects enlightened warriors, and their

civilization records significant advancements concerning just behavior in war (*jus in bello*). One need look no further than the Torah to find just war guidance; it is conveyed to us in the words and wisdom of the Deuteronomist: "When you are at war with a city and have to lay siege to it for a long time before you capture it, you shall not destroy its trees by putting an ax to them. You may eat their fruit, but you must not cut down the trees. After all, are the trees in the field men, that they should be included in your siege? " (Deuteronomy 20: 19). On the surface, the Deuteronomist directs that innocent trees be spared the horrors and savagery of war since, if trees have nothing to do with the conflict, they should not be destroyed. Trees are not, however, the main focus of attention of Deuteronomy 20: 19. Below the literal meaning of this scripture passage, the Deuteronomist suggests that the innocents or noncombatants of war be spared the horrors of war. This guidance on war is found in chapters 20 through 23 of Deuteronomy. Here we see the beginnings of a theory of noncombatant discrimination.

In the inter-testamental period of Jewish history, a number of Israel's greatest rabbis, philosophers, and historians address the problem of noncombatant immunity. They direct Jews to extend the principle of discrimination to the innocents of war. For example, the protection of innocents and, indirectly, the principle of proportionality are directly addressed in this rabbinical directive: "… [The protection of innocents is] supported by the rabbinical ruling that the fourth side of a besieged city be left open" (Kimelman 1992, 316). Leaving an escape route open, might spare innocents the horrors of a military siege. The writings of the Chinese philosopher Sun Tzu (circa 6th century B.C.) would agree with the idea of leaving open an escape route, but for a different reason. He would say that in allowing an escape route for the enemy, we diminish his

need to fight to the death, and thus make him more vulnerable, or open to the idea of surrender.

Although the purpose of an army at war is to achieve its military objectives, both the Jewish philosopher Philo Judaeus (c. 13 B.C.- A.D. 48) and certain rabbis rejected the claim of military necessity as an excuse for military excess (Kimelman 1992, 314). Tactics or weaponry that cause more human suffering than was necessary, like any military action lacking a sense of proportionality, were strictly prohibited by Jewish law and custom.

The Jewish historian Flavius Josephus (A.D. c.37- c.101) sees another dimension to the discussion on discrimination. He adds an ecological insight by advising against the wanton destruction of enemy lands and the unnecessary killing of the enemy's beasts of burden. Josephus notes that the great Philo "extends the prohibition against harming innocents to include vandalizing the environs of a besieged city..." (Kimelman 1992, 315).

Thus, the Israelite civilization made significant contributions to the evolution of just war theory. Some of these developments include: (1) the concept of a war directed by God, or what we call a 'holy war'; (2) the distinction between offensive and defensive wars; (3) a foundational understanding of the crucial criteria known as discrimination and proportionality; (4) the concept of noncombatant protection; and (5) the protection of the environment in war. For the Israelites, war was usually waged with a legitimate purpose (*jus ad bellum*) and rarely wantonly. For the Jews, just wars followed a structure and code that helped lay the foundation for a Judeo-Christian just war tradition which guides just war principles to the present day.

HISTORICAL SURVEY

The Greek Civilization

The history of the Greek civilization is a history of intrastate and interstate warfare; it is also a history of the evolution of Western thought, a breeding ground for philosophies and political theories. This treasury of concepts would eventually broaden the parameters of just war thought and practice. Some of these principles are found in the Greek code of common customs (*koina nomina*) that include banning certain types of weaponry and pledging never to deny the enemy the essential elements of life (i.e., food and water), even in conflict. Unfortunately, Greeks applied these rules only to other Greeks. They treated fellow Hellenes as civilized peoples, but they did not extend those courtesies to non-Greek peoples or nations (Johnson 1999, 4); they were not considered enlightened.

Common practice dictated that Greeks should conduct talks and mediate with other Greeks before resorting to the use of force. Some of these negotiations are still known to the world today. As Bainton notes, "In various other ways the Greeks obviated conflicts: the Olympic Games (inaugurated in 776 B.C.), the Amphictyonic Councils (Apollo) (c. 513 B.C.), and the Delphic Oracle all contributed..." [to less warfare] (1988, 36). So, the Greeks tried to resolve issues peacefully or athletically before they evolved into internecine slaughter. In a sense, Greeks would not use force against other Greeks unless it was a last resort. Nevertheless, it would be a mistake to view the Greeks as a uniquely peace-loving people. Understanding the critical role that force played as an instrument of national policy, the Greeks did not hesitate to use force when they deemed it necessary, especially for defensive purposes (as in their war against Persia).

The Greeks were pioneers, however, in their efforts to keep their behavior during war just and to keep combatants in check on the battlefield. Some of the earliest recorded "just war" *jus in bello* directives date as far back as the 8th century B.C. These directives illustrate their resolve to keep the chaos of war as humanly focused and civilized as possible:

> Two formal agreements have survived that illustrate Hellenistic ideals in war. The first was a tradition reported by the geographer Strabo around 700 [B.C.] during the War of the Lelantine Plain, in which opposing armies agreed to refrain from the use of missiles. The second, mentioned by the orator Aeschines, suggests that around 600 [B.C.], the victors of the First Sacred War swore never again to cut off food and water to besieged fellow Greeks. These … were eventually reinforced in Greek mythology and the Homeric sagas. From 700-400 [B.C.], restraints on warfare in Greece continued to evolve. Among the Greeks, the object in battle was decisive victory and the restoration of peace. Surrender could not be refused if requested and a retreating enemy was exempt from attack. Attacking the social and economic order was informally banned. (Johnson 2001, 4)

In his philosophy, Plato (c.428- c.348 B.C.) built upon the rich foundation of the Greek culture and ideals. He enunciated ideas and concepts that would eventually form the foundation of a just war theory. Plato believed that states must stand ready to defend themselves against their enemies. In this sense, he was a political realist who understood the role of power politics and the use of force as an instrument of national politics. While Plato believed that states would occasionally need to resort to force to meet the challenges of an uncertain world, he did not believe that war should be conducted without limits:

> Since according to Plato the object of Hellenic feud was the restoration of peace, the amount of violence should be restricted to the minimum necessary to obtain satisfaction from the enemy. The houses of Greeks should not be burned. The land should not be scorched. Only the annual harvest might be confiscated. The sensibilities of the foe were not to be outraged by despoiling the dead of anything but weapons, nor by erecting trophies of victory in temples. Indiscriminate

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destruction would harm the innocent because in any conflict the whole population, consisting of men, women, and children should never be regarded as enemy. Those really responsible for the quarrel would always be few. Plato was here verging on the distinction between combatant and the noncombatant, but [he] used rather the terminology of the guilty and the innocent and did not suggest they could be segregated during the course of the conflict. His warning was simply against indiscriminate violence in which all alike would suffer. (Bainton 1988, 38; Plato 1952, 367)

Plato's ideas form the philosophical foundation of a contemporary understanding of the principles of proportionality and discrimination. He expected warriors to discriminate the innocent from the guilty in war; he anticipated what in contemporary terms we call discrimination of noncombatants. He understood that restraints in the conduct of war could someday result in the establishment of a just and lasting peace. Thus, Plato linked justice in war behavior with a successful termination of war and the successful achievement of post-war peace.

Fleshing out his ideas on just behavior in war, Plato advised civic leaders that conquered Hellenic peoples were not to be executed or enslaved. Further, suggesting that their persons and properties be protected, he informally banned any attacks on social and economic order. This resulted in limited warfare amongst the Greek states that rarely threatened the survival of any one state. Thus, Plato urged that violence be kept to a minimum, that the dead and conquered be treated with respect, and that the innocents or noncombatants in war be protected. Following these broad guidelines would keep warriors and their cause virtuous, he believed. Another commentator states:

> Although Plato writes less about war than we might expect--especially considering the fact that his dialogues are historically set during the Peloponnesian War--the right conduct of war constitutes a crucial concern for Plato. ... Rightful conduct of war is linked to the practice of virtue. Neither a good statesman nor a good military man can ignore this link, which joins military pursuits not only to courage, but to the whole of virtue, including justice. In *The*

> *Republic* the passage from a luxurious to a well-ordered and virtuous city is described by means of the proper education of the city's military guardians, and a teaching of *jus in bello*--to use a just war term--for wars between Greeks is outlined. (Syse 2002, 36)

Plato, and after him Aristotle, held that these prohibitions and restrictions applied only when Greeks fought with other Greeks, not in conflicts with non-Hellenic peoples or states. In *The Republic*, Plato went so far as to suggest that war between Greeks not be labeled war:

> And therefore when Hellenes fight with barbarians and barbarians with Hellenes, they will be described by us as being at war when they fight, and by nature enemies, and this kind of antagonism should be called war, but when Hellenes fight with one another we shall say that Hellas is then *in a state of disorder and discord*, they being by nature friends; and such enmity is to be called discord. (Plato 1952, 368 emphasis added)

In directing leaders not to erect victory monuments once a truce has been accepted, Plato shows great sensitivity to defeated forces, linking war to the establishment of a fair and lasting peace. In this sense, Plato never loses sight of the goal of warfare: to establish a just and lasting peace. In essence, he not only condemned *total war* between Hellenes, but, in advising that all warfare be restricted, he offers a template for just behavior in war. As Syse notes:

> I believe we find the contours of both *jus ad bellum* and *jus in bello* in the Platonic corpus. By linking the conduct of military affairs to an overall view of justice, as well as an ideal of the soldier and his (or her) place in the city, severe limits are placed on the resort to, as well as the actual use of, force. (2002, 44)

> Plato had another dream, that of rule by a philosopher-king. Unfortunately, some

of the leaders who eventually governed Greece showed little of the wisdom or insight necessary for enlightened leadership. In these cases, the contributions of Plato and

Aristotle fell on deaf ears. Consequently, we see a gap between Greek theory and Greek practice regarding just war, as the following insights from Aristotle illustrate.

Like Plato and other Greeks, Aristotle (384-322 B.C.) viewed wars between Greeks or Hellenes in a different light from wars fought against foreign nations or cultures. Non-Greeks were considered barbarians and were not extended the same justice in warfare as fellow Greeks. He wrote, "...Since some men by their virtue ... deserved to extend their rule over less worthy men, wars by which they enslaved others were naturally just" (Aristotle Cited in Russell 1963, 3).

As a fourth century B.C. philosopher, Aristotle viewed war as an ordinary part of life. He even divided human life into two parts: business and leisure, or war and peace....

> There must be war for the sake of peace ... business for the sake of leisure, things useful and necessary for the sake of things honorable.... Men must be able to engage in business and go to war, but leisure and peace are better; they must do what is necessary and indeed what is useful, but what is honorable is better (Aristotle 1952, 1014).

The Greeks waged war with their eye on the ultimate prize: the establishment of a just and lasting peace, a time wherein all Greeks could enjoy the fruits of justice and good will. The Greeks fought, therefore, to restore order, defend their culture, and to create the secure conditions that would allow them to live out their ideals:

> Many Greek wars were waged with one goal in mind: the restoration of peace. For the early Greeks, peace was also associated with prosperity (*eirene*), and Hellenistic Greeks similarly linked security with justice. Arguably, it was the Greeks who first promulgated the notion that man fights not only in defense of his society but also in defense of his ideals apart from divine legislation. In that sense, war ennobled the human spirit [so] that the highest values of man--courage, valor, sacrifice--were made manifest. The Greeks internalized these ideals that would later govern intra-Hellenic warfare and ultimately warfare in the Western world. (Johnson 2001, 3)

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Despite his cerebral justification for war, Aristotle argued for restraints on the battlefield.

He wrote, "The very nature of man calls for a rule of reason rather than of passion or

violence, and limits war to what is necessary for peace" (Aristotle cited in Holmes 2001,

3). He therefore suggests ideas that are similar in nature to the just war criteria of

proportionality and discrimination.

Thucydides (c.460-c.400 B.C.) records an incident that occurred between the

Greek city states of Athens and Melia at the height of the Peloponnesian War (434-404

B.C.). Outnumbering the Melians, the Athenians demanded surrender. The Melians

rejected the Athenian demands and responded:

> We are not prepared to give up in a short moment the liberty which our city has
> enjoyed from its foundation for 700 years. We put our trust in the fortune that the
> gods will send and which has saved us up to now, and in the help of men--that is,
> of the Spartans; and so we shall try to save ourselves. (Thucydides 1972, 407).

The Melians made the Athenians a counter-offer that included terms of peace and an

alliance to benefit both sides. After this offer was rejected by the Athenians, the Melians

were eventually destroyed. Melian villages were plundered, their men were killed, and

their women and children were killed or sold into slavery. To prevent further threat, the

Athenians re-colonized the Melian territory with 500 of their own citizens. There are

other historical examples of Greek disregard for the rules of war, even in inter-Hellene

conflicts. Some of their most grievous violations were committed by one of their most

famous and celebrated heroes, Alexander (356-323 B.C.), whom history would record as

"the Great."

In September, 335 B.C. the populace of Thebes threatened to withdraw from the

Hellenic League. Having received news that Alexander had been killed in a war against

barbarians in the north, they made their move to take advantage of Alexander's death and declare their independence. But Alexander was not dead. Moreover, he moved with terrifying speed and vengence. "Suppressing the insurrection ..., he literally destroyed the city of Thebes and its inhabitants. This was power politics in its most brutal form, but it served as a lesson for other Greek city states, and any spirit of resistance was wiped out" (May et al. 1984, 30; Dupuy and Dupuy 1993, 53-54).

This type of subjugation became a model for Alexander's future conquests of non-Greek nations. One historian describes this policy as follows: "The ultimatum of surrender, the preference of lethal force to negotiation, the subsequent obliteration of the enemy, the inevitable murder of women and children and razing of house and home, and the dire warning to do the same to other would-be insurrectionists ..." (Hanson 1999, 166). In short, war for Alexander meant total war, and this policy led to his army's annihilation of the enemy and the eradication of the enemy's culture. Alexander applied a total war policy throughout his conquests of both fellow Greeks and non-Greeks. At the Battle for Grancius River, for example, Alexander killed more Greeks in a single day (estimates are more than 16,000) than all those who had died on the battlefields of Marathon (490 B.C.), Thermopylae (480 B.C.), Salamis (480 B.C.), and Plataea (479 B.C.) combined. It is estimated that in just eight years of warfare, Alexander killed well over 200,000 people, and 40,000 of these were fellow Greeks (Hanson 1999, 177).

One estimation of Alexander's code of warfare against non-Greek nations is as follows: "As a rule of thumb, we should assume Alexander systematically captured and enslaved all cities in his path. ... Occasionally we read in May and Dupuy of anecdotes about gratuitous executions and crucifixions, should Alexander have been frustrated in

the siege or suffered a minor wound in the assault" (Hanson 178). Following a seven month siege of the City of Tyre, for instance, Alexander butchered seven to eight thousand Tyrians, crucifying two thousand males for their resistance to the Greeks. The remaining thirty thousand innocents, the women, children, and elderly were sold into slavery (May et al. 1984, 34). And so, despite the great strides made by the Greeks in developing a concept of just war, the behavior of the Greeks against the Melians and against the non-Greek "barbarians" displays a real gap between theory and practice.

Despite this gap, the Greeks contributed greatly to the development of just war theory. Their contributions to the understanding of total versus limited war, plus their development of just behavior during and after war, so eloquently described by Plato and Aristotle, form a large part of the corpus for western political thought and, in particular, just war principles. Johnson notes: "The Greek ideal of showing restraint [in the conduct of war] remained largely intact and greatly influenced the Roman Empire, which sought to emulate much of the Greek ethos" (1999, 4). Thus, these principles migrated to Rome where they were eventually incorporated into the thought of the Roman philosopher, Cicero, and, within a few centuries, into that of the Christian Church Fathers, Ambrose and Augustine, as well.

Roman Civilization: Just War and a Generous Peace

Not unlike the Hebrews and the Greeks, the Romans associated peace (*pax*) with security and prosperity and were more than willing to wage war in order to impose peace. ...Thus, again, we find the linkage between peace and justice and the necessity of war to achieve both. By the same token, the Latin word *pax* is from the same root word for 'pact', an agreement not to fight, and therefore is similarly linked with the word for *securitas* (security). (Johnson 2001, 5).

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HISTORICAL SURVEY

Marcus Tullius Cicero (106-43 B.C.), a famous Roman poet and philosopher, wrote in the first century preceding the Christian Era. According to classicist Roland Bainton, Cicero would eventually "transform the concepts of just war into an ethic for the Roman Empire" (Bainton 1988, 41). In his classic work, *The Republic*, Cicero writes about wars that are unjust in nature, namely, "wars undertaken without provocation..." (Cicero cited in Christopher 1994, 13). Cicero held that "... no war is just unless proclaimed or declared" (Ibid.). Cicero thus presents guiding principles for the foundation of an understanding of what makes declaring war just (*jus ad bellum*).

Another scholar clarifies this point: "Cicero defines a just cause as the defense of honor as well as of peace and justice. He thinks it legitimate to revenge a [dis]honor" (Holmes 2001, 7). In this and other *jus ad bellum* foundations, Cicero asserts that war must be declared and waged by a state (the Augustinian principle of just or legitimate authority) and that warriors be instructed to live by a noble code (*jus in bello*). Cicero's just society is therefore a society ruled by justice and reason; for him, these principles weigh significantly in the declaration and in the conduct of war.

For Cicero and the Roman people, to wage a just war, nations must first openly declare the reasons for hostilities and then give their enemies a period of thirty days to reply to their initial demands, declaration, or ultimatum. Once these terms were rejected, certain religious and civic rituals were employed to appease the Roman gods and to illustrate that "just cause" principles had been employed in the process of declaring war. While Cicero never used the terms combatants and noncombatants in distinguishing between enemy forces and innocents, he, like Plato, did refer to the guilty and the innocent, namely, those involved in combat, and those who were not.

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Cicero also addressed the need for humane treatment in war. Like some of the great philosophers before him, Cicero was concerned about the treatment of those defeated in conflict. For him, establishing a liberal and just peace was the strongest foundation for building of the Roman Empire. He therefore viewed just treatment of the vanquished in war as critical to the establishment of a just and lasting peace: "Reviewing the history of Rome until his time, [Cicero] rendered the verdict that she had conquered the world by means of the just war and the generous peace" (Bainton 1988, 42). Like the Persians before them, the Romans invited their conquered enemies to join the Empire and reap the benefits of their advanced Roman Civilization.

The Romans held to a philosophy of *humanitas*; it was a philosophy first made popular by the Greek philosopher Panaetius of Rhodes (180-109 B.C.). Panaetius emphasized the critical need for a person to possess self-knowledge and inner harmony. He taught that man's reason, vital to maintaining his own personal inner tranquility, was crucial in the establishment of civic peace.

Panaetius and his followers fervently believed that self-control ultimately led one to a virtuous life. Cicero built upon this philosophy of *humanitas*. He taught his fellow Romans that humanity is endowed with dignity as part of its nature: "Decorum, civility, and refinement are becoming to him and should govern his deportment. In his dealings with others he should exhibit benevolence, magnanimity, and mercy. Harmony and accord should prevail in his society" (Cicero cited in Bainton 1988, 42). This concept of *humanitas*, which factored significantly in Cicero's understanding of war and peace, would eventually influence the thought of Augustine. Romans adopted the principles of

humanitas in their personal lives and in international relations, especially with nations

that they defeated in combat.

Rome's most famous general, Julius Caesar (102–44 B.C.), embodied the

principles of *humanitas*, even in the way he conducted his Gallic campaigns. Caesar

achieved one of his greatest military triumphs in the Roman campaign against the

Helvetti, a nomadic tribe that migrated in great numbers into the Roman-controlled area

of the Rhone Valley. This Gallic tribe numbered 386,000, of whom over a quarter were

warriors (Dupuy and Dupuy 1993, 113). Realizing that this migration might ultimately

weaken Roman power in the region, Julius Caesar moved his army into place near the

Roman border, strengthened its fortifications, and prepared for the Helvetti advance.

Although outnumbered, the Romans won the battle in a decisive victory near Bibracte:

> Caesar's victory established his position as a leader among his men and as a man
> to be respected by the Gauls.... Caesar once again played the political role by
> ensuring that the Helvetti not only found their way back to their homeland, but
> were prevented from starving. He realized that complete destruction of this tribe
> could only result in a vacuum, which other, more warlike tribes might fill. (May
> et al 1984, 71).

Caesar's treatment of the Helvetti reflects the *humanitas* of Panaetius and the

philosophy of war espoused by Cicero. His enlightened treatment of a defeated nation

reflects why the Romans were so successful in establishing a *Pax Romana*, a peace that

would endure for centuries. Caesar allowed many of his conquered enemies to retain their

leadership, rules of government, and their way of life. In showing such *humanitas*, he

instilled a sense of loyalty and respect among conquered tribes and nations. In essence, he

created allies from enemies and established a just and lasting peace by treating the

conquered with respect and dignity.

The Roman philosophy of *humanitas,* Caesar's humane treatment of the defeated, and Cicero's philosophy of peace, all form the foundation for "just war" principles, that is, just behavior before, during, and after war. Taken together, these principles offer great advancements in the development of the just war tradition.

Christianity and Just War

Depending on the topic, the message of certain Christian scriptural themes is sometimes clear and unambiguous, (e.g., teachings on the Resurrection of Jesus). At other times, however, New Testament themes and teachings are, according to some, ambiguous, nebulous, or even contradictory. Since scripture is often held to be open to personal interpretation, individuals can at times offer diametrically opposed opinions from those that they disagree with. This is the case regarding Christian biblical teaching on war and peace. Quite often, the interpretation of a controversial biblical text is influenced or even prejudiced by the philosophy, theology, or even the politics of the scholar or reader. Therefore, finding definitive scriptural evidence to build a definitive New Testament position on war and peace, as well as a Christian's obligation to participate or not in war, is all but impossible.

The Christian scriptures can be used to both support and reject the use of force and Christians engaging in the affairs of war. For both those espousing the position of Christian pacifism, that is, rejecting Christian participation in war, and those espousing realism, or accepting Christians engaging in war, the scriptures seem clear and decisive. Yet, to a neutral non-partisan, these scriptural texts leave room for discussion, debate, or rebuttal. So, regarding the many areas of ambiguity in New Testament theology, few are

quite as controversial or have the potential to evoke as much passion as that of a Christian's involvement in war.

What message did Jesus *intend* to impart to disciples concerning war and peace? The ambiguity described above has led to the development of three distinct Christian schools of thought that have survived for more than two millennia. The first school regarding war may be labeled *the pacifist school*. Christian pacifism holds that war is never an acceptable option for Christians: "Pacifism, within a Christian context, dates back to the pre-Constantinian church and contends that the true ethic of the disciple of Jesus (is) the nonviolent one" (Burke 2002, 53). This position is revered, respected, and well represented in many of the world's Christian denominations. Doctrinally, pacifism finds its most ardent supporters in Christianity's so called "peace churches," like those of the Quakers and Mennonites. Strong support for pacifism is also found in other non-pacifist Christian churches whose members passionately espouse a relatively pacifist position as part of their own faith. One of these churches is the Roman Catholic Church whose official catechism teaches its position from a traditional just war perspective (Catechism 1994, 554-559). As a result, many Roman Catholics, though by far not the majority, proudly call themselves pacifists.

The second Christian school of thought on war and peace is the Christian *realist school*. Christian realists hold that, while war is always regrettable, it is sometimes unavoidable and inevitable. When war is declared, they insist, it must be waged under the guidelines and conditions outlined in the just war tradition. Some realists believe that war should only be fought as a last resort and that only defensive wars may be justified; other

realists, who view war as a natural component of international relations, do not view the last resort position as a necessary criterion of just war theory.

Finally, another school of thought has developed in the long history of Christianity for those who subscribe to a *holy wars* theory. Such wars include those recorded in the Jewish historical books or those fought in the name of God, like the Christian Crusades. Religious or holy wars were mainly waged in epochs when religion and politics endorsed each other in pro-war stances. The works of Saint Augustine appear to indicate that he supported the use of force not only against the aggressive enemies of the state but also against the enemies of the Church as well. As a onetime Manichaen, Augustine seems to believe that the dangers of heresy were so grave that war might be justified in order to eliminate their threat to orthodoxy. Few Christians would hold to a holy wars ideology in the 21st century. That being the case, it is now time to examine the New Testament passages that support the two major Christian major schools of thought on war and peace: Christian pacifism and Christian realism.

The Scriptural Roots of the Christian Pacifist Tradition

> In light of the attention given in the New Testament to the virtues of love, patience, and forgiveness, one would be hard pressed to find a human activity that is seemingly more at odds with the spirit of the Gospels than violence and war. ... Jesus' injunction about 'turning the other cheek' (MT 5:38-39) is the clearest but not the only statement about the ideal to be pursued where violence is concerned, and his own life and death underscored the pacific character of the Christian faith. If violence has any place in the Christian's life, it would appear that it must be a violence which is endured rather than inflicted, a violence which is suffered in imitation of the Founder as a way of transcending human passions and breaking the endless cycle of injury and retaliation. (Swift 1983, 17)

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As is evident in Swift's passionate writings, many view the Christian Scriptures as a testament of peace. They view Christianity as a new covenant of love that stands in sharp contrast to the "eye for an eye" dictates of the Old Testament. Traditionally, Christian pacifists view the Sermon on the Mount as their primary guidance on war and peace. They interpret this great teaching of Jesus to mean that all war and all fighting are contrary to true Christian discipleship and are therefore prohibited to any followers of the Lord Jesus. In this famous sermon, Jesus directs his followers to interpret Mosaic Law in an even more pacifistic way than that taught by the rabbis and scholars of the Jewish law: "You have heard it said to your ancestors, you shall not kill; and whoever kills will be liable to judgment. But I say to you, whoever is angry with his brother will be liable to judgment" (Matthew 5: 21-22a).

In the Sermon on the Mount, Jesus appears to espouse *a new law* of non-resistance and non-retaliation, a law transcending the dictates of Jewish law as it existed in Jesus' day. The Master tells his listeners: "You have heard it said, an eye for an eye and a tooth for a tooth. But I say to you, offer no resistance to one who is evil. When someone strikes you on your right cheek, turn the other to him as well. Should anyone press you into service for one mile, go with him for two miles" (Matthew 5: 38-42). While Christian realists might argue that Jesus' intent was to set a standard for personal, not corporate behavior, none can argue that Jesus sets a new standard of love and tolerance for those wishing to be his disciples.

Jesus challenges his followers to stretch their conventional understanding of love and the existing Jewish law in new ways. He asks his followers to love *both* their neighbors and their enemies, moving beyond the traditionally understood dictates of the

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then current Jewish law to a higher law. He challenges followers to ignore or disregard a very human tendency, the human instinct to protect yourself: "You have heard it said, 'you shall love your neighbor and hate your enemy.' But I say to you, love your enemies, and pray for those who persecute you, that you may be children of your heavenly Father, for he makes his sun rise on the bad and the good, and causes the rain to fall on the just and unjust" (Matthew 43-46). And so, Christians are given what appears to be a new code of conduct, a new law of love that Christian pacifists interpret to be a command to be nonviolent in their personal and communal lives. It would be a mistake, however, to view this as a distinctly Christian directive, or as radical a departure from Judaism and its culture as the scriptures or individuals might lead us to believe:

> The reality is, Christians are often unaware that the gospel of peace is not a Christian invention but something that was inherited from and grew out of Jewish soil. There was, indeed, an impressive heightening and deepening of peace themes in the Christian Scriptures and in Early Christianity. But ... this development was not at all unlike similar developments also going forward within postbiblical and early rabbinic Judaism. To present one of these traditions as a tradition of peace and the other as something other than that is, objectively, a mendacious misrepresentation. (Daly 2001, 7)

Be that as it may, the Christian law of love is reinforced in numerous scripture passages. When Peter pulls his sword to defend the Master against his various enemies in the Garden of Gethsemani, Jesus instructs him not to resist: "And behold, one of those who accompanied Jesus put his hand to the sword, drew it, and struck the high priest's servant, cutting off his ear. Then Jesus said to him, 'Put your sword back in its sheath, for all who take the sword will perish by the sword'" (Matthew 26: 51-52). In warning that those who live will die by the sword will die by it, this verse appears to indicate that Jesus forbids the use of violence and supports the pacifist position, even in situations

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where force is usually justifiable. An example is using force to defend the defenseless, as was the unarmed Jesus in the Garden. This same message is repeated in another synoptic passage: John 18:10.

Pacifists find further support in other bible passages that direct Christians not to retaliate (Matthew 5: 39-41; Romans 12: 17, 19-21; Peter 3: 9; and Thessalonians 5: 15). Here believers are instructed to overcome evil with good, not with the use of force (John 18: 36), for the Master's kingdom is not of this world and his followers are not authorized to fight according to the norms of this world (Swartley 1990, 938). It is also significant that nowhere does the Sermon on the Mount mention protecting the defenseless. The references are to _your_ cloak, compel _you_, and so on (Bainton 1988, 61-62). So, the school of Christian pacifism finds its direction in Jesus' admonitions to turn the other cheek (Matthew 5:39), not resist evil (Matthew 5:10), and love one's enemies (Matthew 5: 44). No emphasis is found on self-protection and self-preservation. In fact the Christian must be willing to die, like the Master, without resisting his or her enemies (Matthew 5: 10).

Pacifists point to Jesus' apparent disapproval of gentile mindsets and authority:

> Jesus called them together and said to them: 'You know how among the gentiles those who seem to exercise authority lord it over them; their great ones make their importance felt. It cannot be like that for you. Anyone among you who aspires to greatness must serve the rest; whoever wants to rank first among you must serve the needs of all. The Son of Man has not come to be served but to serve and to give his life in ransom for the many. (Matthew 20: 25-28)

Some read this to mean that Christians must avoid the ways and politics of the world. As followers of Jesus, they must model the humble, selfless, and even vulnerable service of their Master, rejecting both war and their participation in war. Modern Christian

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pacifism, which is alive and well, still enjoys the strong support of many who call

themselves followers of Jesus:

> The pacifist tradition, broadly construed, asserts that there is one, overarching
> truth that provides a moral compass when considering the use of force: the direct,
> conscious, purposeful taking of life can never be justified on an interpersonal,
> social, or international level. Pacifism draws upon theological and moral
> resources to condemn the use of violence as a means to any end, good or evil, and
> its proponents have criticized the just war tradition for legitimating violence
> without limiting it, as it ostensibly seeks to do. (Owens 2001, 2).

It would be difficult to study the life and teachings of Jesus without coming to the

realization that Jesus was himself a man of peace. He rejected the role of warrior-messiah

or king-messiah long awaited by many of the Jewish people. Instead, he followed the

path of the Suffering Servant portrayed in the writings of the Prophet Isaiah (Isaiah 52).

He was a nonviolent messiah who went to his death forgiving his own executioners (Luke

23: 34). It is no wonder that many rejected both the person and his message, for Jesus

stood in sharp contrast to the political leader and liberator that many Jews had long

awaited. Some may try to make the case that Jesus was a more politically active messiah

than that portrayed by the pacifists, but there can be no doubt Jesus' main focus was

clearly love, not politics; forgiveness, not retribution; accepting an injustice or an

indignity and not redressing the personal wrong.

The Scriptural Roots of the Christian Realist Tradition

It is fair to say that, since the era of Constantine (c. A.D. 280-337), most of

Christianity has embraced the theory of the just war. For most of its history, Christianity

has generally aligned itself more closely with the Christian realist or liberalist school versus the rigorist or Christian idealist school.

Like the Idealists, Christian Realists call on the New Testament to support their position. Proponents of Christian realism point to the prominent role given to warriors in the scriptures, and highlight the conspicuous silence of the scriptures about the vocation of soldiering and the status and relationship these warriors enjoyed in their relation to, first, John the Baptist, and then, Jesus Christ. When soldiers approached John the Baptist and requested baptism, John did not chide them for their profession and turn them away. Instead, he told them, "Do not bully anyone. Denounce no one falsely. Be content with your pay" (Luke 3: 14). John appears to be comfortable with the fact that they are soldiers, accepting their profession of arms. In another passage, a Roman centurion asks Jesus to cure his servant. Jesus did not turn down the military leader, nor did he instruct him to give up his profession or change his heart. Rather he answered his request, healed the servant, and remarked on the depth of his faith (Matthew 8: 5-13).

After a soldier professed publicly that he was not worthy to have the Master enter his house, Jesus expressed amazement at the man's faith and praised the soldier: "I tell you, I have never found so much faith among the Israelites" (Luke 7: 9; Luke 23: 47). The comments of the centurion who stood at the foot of the cross show the depth of faith of these men who belonged to the profession of arms: "Truly, this was the Son of God" (Matthew 27: 54).

It is likewise significant that, in the post-Resurrectional church , Cornelius, another Roman centurion assigned to the Italica cohort, is mentioned in the scriptures as a religious and God-fearing man, an example of true discipleship. After hearing Peter's

explanation, the more traditional apostles also accept Cornelius, Roman soldier though he is. Realists, who point to the fact that the scriptures call the Centurion a "God-fearing man." make no comment as to this just man's station in life, highlight this event as scriptural support for their realist position (Acts 10-11). And so, after listening to the teachings of Peter, this soldier and leader of soldiers becomes the very first Gentile admitted to the early Christian church, a prominent milestone that causes no problem to Peter, who received him into the church, or the scripture writer who records the event for posterity. In fact, the faith, example, conversion, and conviction of Cornelius would eventually lead Saint Peter to a new openness towards all gentiles, a change in his theology and the direction of Christian ministry. This theological rapproachment with the teachings and person of Saint Paul towards gentiles mark a significant turning point in the apostolic age of the church.

Far beyond neutrality regarding conflict, some New Testament passages appear to be "bellicose" in nature: "Do not suppose that my mission on earth is to spread peace" (Luke 12: 51). Jesus urges his followers to, "Give to Caesar what is Caesar's, but give to God what is God's" (Mark 12: 17). In so doing, Jesus appears to give civil authorities some say in the temporal affairs of his followers. Some realists interpret this passage to be a call for the Christian to militarily support, quite possibly with their own military service, meeting the needs of the state. Paul's instruction to the Christian community in Rome appears to concur:

> Let every person be subordinate to the higher authorities, for there is no authority except from God, and those [just authorities] that exist have been established by God. Therefore, whoever resists [just] authority opposes what God has appointed, and those who oppose it will bring judgment upon themselves. (Romans 13: 1-2)

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For millennia, realists have used these passages as justification for Christian participation in war. In fact, Paul's instruction above formed the basis for the principle of right authority in Augustine's just war theory. A renowned scholar of early Christianity appears to side with the realists:

> The concept of the just war has been validated by reference to those passages in the Gospels and Pauline writings which in some measure endorse civil government. Among the words of Jesus the classic text has been, 'Render to Caesar the things that are Caesar's.' This pronouncement was actually a rejoinder to a question posed by the Herodians and Pharisees on the propriety of paying tribute. A more incriminating question could not have been contrived. Palestine was an occupied country. The tribute was a device of exploitation and therefore the symbol of imperialism.... (Bainton 1988, 57-58)

Two other statements of Jesus seem to support the realist position: "My mission is to spread, not peace, but division" (Matthew 10: 34, and Luke 12: 51), and, immediately after the institution of the Eucharist and right before his arrest, Jesus states bluntly: "And the man without a sword must sell his coat and buy one" (Luke 22: 36b).

In support of this viewpoint, Christian realists have, for centuries, pointed to the *personal* example of conflict set by Jesus. They willingly accept the Master's peaceful submission to the civil and religious authorities at his arrest, trial, and crucifixion: "Do you not suppose I can call on my Father to provide at a moment's notice more than twelve legions of angels?" (Matthew 26: 53). On the other hand, Christian realist followers cite the behavior exhibited when Jesus turned over their tables and expelled the traders from the temple (Mark 11: 15, and Luke 19: 45-46). One scholar observes: "[This action] is often interpreted as an occasion on which Jesus had recourse to violent physical coercion, thereby proving that his law of gentleness and non-resistance was subject to exceptions under certain circumstances" (Cadoux 1982, 34).

Christian realists and advocates of a just war theory pose an interesting question to those idealists who would passively watch while social structures and institutions underwent attack: "Is the good of civil society best served by the potential anarchy and civil strife that might come as a result of a pacifist stand?" In other words, must Christians stand passively by while societal mechanisms that guarantee the good order and discipline of society are destroyed by enemies of the legitimate state? Cadoux comments:

> It is commonly assumed that obedience to the non-resistance teaching of Jesus is so obviously inconsistent with the peace and well being of society that he could not have meant this teaching to be taken literally. Thus Professor Bethune-Baker says: "If the right of using force to maintain order be denied, utter social disorganization must result. Who can imagine that this was the aim of one who came in peace? It was not Christ's aim; and He never gave any such command." (1982, 42).

Finally, the Book of Revelation (Apocalypse) gives Christians a prophetic look at the second coming of Jesus at the end of the world. According to this text, the end times will be marked by wars, and Jesus Christ himself is presented in these apocalyptic images as a victorious military leader "from whose mouth springs a two-edged sword" (Revelation 1: 16; 2: 12; 19: 15). This "warrior of justice" leads the armies of heaven, and under his leadership the beast of the Apocalypse and the rulers of the Earth are to be defeated (Revelation 19: 11-21).

Military heroes and bellicose metaphors, which play a significant role in the Christian scriptures, appear to lend support to the realist school's approach to war or peace, allowing for some sort of Christian participation in war. At the least, these passages appear to contradict other scriptural passages. As to whether or not the Christian church was pacifist or realist before the Constantinian era, some evidence supports both

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opinions. On the surface, it appears that early Christians can be divided into three major groups: strict pacifists who abstained from official involvement in government, partial participants in the affairs of state (as long as their faith was not compromised), and full participants for whom the participation in war was permissible:

> Thus, on the basis of the Christians' own Scriptural traditions concerning war and military service in both the old and new testaments, and on the basis of their general view of the role of the state in society, there seems to have been insufficient grounds for a clear-cut Christian consensus on the legitimacy of war and violence. More importantly, perhaps, there appears to have been no pressing reason for coming to grips with the problem at all during the first two centuries after Christ. (Swift 1983, 26)

The Early Christian Church

Was the early Christian Church as pacifist as historians like Cadoux and Bainton would have us believe? As discussed earlier in this dissertation, both pacifist and realist schools existed in Early Christianity. Nevertheless, until recently, "It has been a commonplace of historical scholarship that the early Christians were pacifists. Theologians and historians have pointed to an extensive body of early Christian literature to support the claim that this was the common early-Christian position..." (Daly 2001, 20). This perspective may, however, prove to be only partially accurate.

While acknowledging the existence of both pacifism and militarism, Catholic historians have traditionally held that pacifism was the dominant school in the post-apostolic church, and it remained de facto the more prominent philosophy until the era of Constantine and his legalization of the Christian Church in the Roman Empire. Recent scholarship is more nuanced than this traditional viewpoint, however. Robert Fox and

James Turner Johnson believe that this position is over-stated and not reflective of the real life of the post-apostolic Church: "Early Christian evidence does not lead to one definitive position of the Church regarding the use of force" (Fox 1963, 16). So why was the early church considered to be predominantly a pacifist church?

Traditional scholarship points to the fact that Christians were members of a powerless minority, and, as such, they were thrust into a nonviolent role. Recent evidence suggests a different reality, however, and the post-apostolic Church now appears less pacifistic than portrayed in the past (Daly 2001, 7). To address this issue, since Christianity finds it roots in Judaism, our inquiry begins there.

Since Jews were not allowed to join the Roman army and, most early converts to Christianity were Jews, military service was not an occupational choice or option for the majority of Christianity's first century adherents (Fox 1963, 12). The main reason for this prohibition among the Jews was religious. Roman soldiers were expected to follow the practices of Roman army life, where soldierly rites and responsibilities included the worship of the Roman gods. Honoring pagan gods and conducting some forms of worship to the Roman emperor were culturally and religiously abhorrent to devout Jews. In addition, the soldier's life was a rough and lonely life with its traditional camp following prostitutes, as well as the occasional looting and raping that fall to the victors of war. Thus, most early converts to Christianity would have viewed army life as morally repugnant, if not absolutely contrary to Gospel dictates and values. Further, because Rome had occupied Israel and destroyed its Temple, few Jews would have felt attracted to such an army of occupation. It is no wonder that some Church Fathers like Origen and Tertullian viewed military life as a near occasion to sin. Idolatry, fornication, rape,

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robbery, and pillaging were obviously countercultural to those espousing a Christian lifestyle.

Like Jewish zealots, early Christians viewed Rome as an oppressive conqueror who robbed Israel of political autonomy and cultural identity. Few Romans appear to have distinguished between Jews and Christians (whether from Jewish or Gentile backgrounds). Both groups were despised. Thus viewed, neither group would want to join a system bent on persecuting them for what they believed (Bainton 1988, 76). Finally, since recruitment into the Roman military was restricted to Roman citizens, opportunities for early converts to choose military service seem quite limited (Swift 1983, 26). According to Robert Fox, ideological, political, and theological conflicts like this would have made recruitment of both Jewish-Christians and Gentile-Christians problematic.

But do these arguments for non-participation in the Roman legions prove that early Christianity was a pacifist religion in principle? The historian Adolph von Harnack offers these thoughts:

> From the death and resurrection of Jesus Christ until the time of Constantine ... there is little evidence to support a strictly pacifistic position. While certain theologian-Doctors like Tertullian enforce a certain opposition to militarism and bloodshed, the official church never addresses the issue. There were two schools of thought in the pre-Constantinian church: the *rigorists* (pacifists such as Tertullian, Origen, and Lactantius) who were opposed to Christians joining the military services and who forbid them to shed blood or join the military (although both Origen and Tertullian prayed that the Roman army be brave and victorious), and the *liberal* school which supported the enrollment of Christians in the military and viewed war as just and the army as a legitimate arm/extension of the will of the state. (Harnack 1961, 16-28)

Thus, historians often claim that war and Christian participation in war was not a major issue for early Christianity. Nevertheless, Roman soldiers are generally favorably treated in Christianity. Three notable Roman centurions appear in the New Testament. Our Lord complimented the first, who wanted his servant cured, for his great faith (Matthew 8: 5-13). The second, who pierced Our Lord's side with a lance, said, "Truly, he was the Son of God" (Luke 23: 47). The third, as directed by an angel, invited Peter to preach to him about Christ (Acts 10-11). Despite these favorable portraits of soldiers towards Christianity, however, before the year 180 little evidence exists of Christians serving in the Roman military. On the other hand, while pacifism appears to have had a strong following in the first centuries of the Church, little evidence can be found to prove that the Church disapproved of military service in general. In fact, since some Christians chose military life as their career, Christianity apparently never officially disapproved of the military profession. Saint Paul's guidance seems to lend credence to the position that converts were encouraged to remain in their vocations, even after their conversion to Christianity, "Let everyone stay as he was at the time of his call" (1 Corinthians 7:20).

In the second and third centuries, when Christians appear much more disposed to military service than those who came before them, the numbers of Christians found on the roles of the military services appears to increase. Such service was often hazardous for life and faith: "The pre-Constantinian Acts of Military Martyrs give solid evidence that the Christian soldiers who became martyrs did not lay down their lives because they had problems with the 'violent' aspects of their profession: their problems were with the religious practices unavoidably connected with it: [the] Roman army religion" (Daly 2001, 20).

James Turner Johnson and Roland Bainton both point to the increase in Christian military vocations as evidence that pacifism was not the only school of Christian thought prior to Constantine's legalization of and subsequent Christianization of the Roman Empire:

> From then on the references to Christian soldiers increase. The numbers cannot be computed. The greatest objection to military service appears to have been in the Hellenistic East. Christians in northern Africa were divided. The Roman church in the late second and third centuries did not forbid epitaphs recording the military profession. The eastern frontier reveals the most extensive Christian participation in warfare, though concurrently we find there a protest against it among groups tending to ascetic and monastic ideals. (Bainton 1988, 71-72)

While most scholars point to Constantine's conversion as a watershed event affecting the Christian attitude toward and participation in war, a notable occurrence before Constantine's adoption of the Christian faith proves the existence of large numbers of Christian soldiers. King Abgar IX of Syria ruled Edessa from 179 to 216. When Abgar converted to Christianity around the year 202, he established Christianity as the official religion of his kingdom (Bainton 1988, 70). It is therefore probable that those fighting in his armies to defend king and realm felt no tension in their dual role as Christian warriors. They saw no conflict in defending their empire and following the dictates of Christianity. According to Bainton, the ruler of a frontier province would hardly have embraced the Christian faith if it had meant depriving himself of the military resources needed to defend his empire.

The Church Fathers

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The Fathers of the Christian Church represent the theological and cultural climate of their time. They reflect the existence of both the realist/rigorist and idealist/pacifist schools in Christianity's first centuries. "[While] the writings of Sts. Clement of Rome, Justin Martyr, and other Church Fathers of the period deny any general Christian responsibility to engage in warfare, neither do we find in these writings any clear spirituality on pacifism" (Pawlikowski 1993, 1014). Pacifism is espoused in the writings of certain Church Fathers, most notably, the theologians Tertullian and Origen. As a pacifist, Tertullian (160-220) openly questioned how Christians could profess their faith and then serve in the public arena. "Tertullian, like most Christian apologists before him, emphasized the non-violent character of the Christian community" (Hunter 1992, 88). He believed that these roles are "...so closely tied to idolatry and bloodshed that one can hardly imagine a Christian's holding such a position. And with respect to military service ... the case is just as conclusive" (Swift 1983, 41).

Like many others, Tertullian appears to have approached the Gospel literally; he fervently believed that those who live by the sword would die by the sword. He does, however, make a distinction between Christian civilian-converts and soldier-converts. Although he holds that civilian converts must avoid the military service altogether, he suggests that soldier-converts not abandon their present vocation, but rather, remain in the service of the state in the vocation of soldier. He only asks that they not participate in any actions that would compromise their baptismal vows or betray their Christian character and witness (Swift 1983, 45). It is fair to believe, however, that in his heart, Tertullian viewed the role of a Christian and the role of a soldier as at least potentially mutually exclusive, if not contradictory vocations.

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Clement of Alexandria (150-215), another famed theologian, wrote often on the topic of war and peace, and a Christian's participation in war. Scholars sum up some of his texts about these topics as follows:

> Like Athenagoras before him Clement thinks of wars as being inspired by demons (i.e., pagan deities) (*Exhortation to the Greeks* III.42.1), and he makes the point more than once that Christians are 'a peaceful race.' 'In peace, not war are we trained,' he says in *The Teacher (i.12.99)*, and later in the same work he uses the imagery of music to describe man as a 'peaceful instrument' who honors God with 'the word of peace alone' (*The Teacher 2.4.42)*. Elsewhere, following the lead of St. Paul, he uses military analogies to explain the Christians' call to grace and their role in the bloodless army of Christ. (Swift 1983, 50)

While Clement's statements forcefully condemn war, they do not prohibit Christians from participating in the defense of the Empire as soldiers. Nor do they support the position of absolute pacifism suggested by some historians and contemporary pacifists who criticized Christians' participation in war, pointing to early Christianity to support their theological and philosophical beliefs. For example, after referring to Moses the Lawgiver as a successful military commander who carries out the will of God in Israel's military campaigns, Clement describes Jesus as a military commander who leads his troops (Swift 1983, 51)

On the other hand, Origen of Alexandria (184-251), despite his great devotion to the Roman Empire, of which he prides himself as a loyal citizen, did not believe that Christians should serve in the military. In *Against Celsus*, he asks his fellow Christians to assist the emperor, not by military service, but through prayers for the empire. Fifty years before Origen, Celsus wrote that paying tribute to Caesar and defending the Roman Empire were "… inseparable elements in any loyal citizen's concern for the realm." In doing so, Celsus claimed that, if all Romans followed the Christian pattern of refusing

divine honors to the ruler, they would expose the empire "to the ravages of the most lawless and uncivilized barbarians" (Swift 1983, 53). Thus, Origen directs that Christians defend their empire through the power of faith, not force. Just as Christ had directed his followers not to return violence for violence, for Origen, combat, even just combat, should be left to non-Christians.

Likening Christians to pagan priests, Origen believed that followers of Christ had an obligation to keep their hands free of bloodshed so they would remain undefiled and ready to offer sacrifice to God (Chadwick 1965, 509). Decades later, Basil the Great (c.329-379) suggested that those whose hands were unclean should abstain from receiving the Eucharist for three years. In 314, the Council of Arles (in Gaul) decreed that those who laid down their arms in peace should temporarily abstain from receiving communion. Church historians like Louis Swift consider Origen the most eloquent pacifist writer of the young Christian Church.

Lactantius (240-320) was a pupil of Origen. Following the lead of his teacher and mentor, he begins his writings by espousing a Christian theology of pacifism. Besides criticizing the Romans for their praise of 'just wars,' he condemns all who would use or extol force (Cadoux 1982, 54) . For example, he criticizes gladiators and those who attend gladiatorial contests. In his *Divine Institutes*, he fears that watching armed conflict might be an enticement to vice, and therefore, he fears that even spectators run the danger of corrupting their souls (Swift 1983, 62). In his first writings, Lactantius opposed both military service and capital punishment:

> It should be noted that Lactantius makes no distinction between peacetime and wartime service in the army. For him it is all of a piece. The Roman spirit of reverence (*pietas*), he says, is found, "among those who have nothing to do with

war, who preserve a spirit of peace with everyone, who are friendly even with their enemies, who love all men as their brothers, and who know how to control their anger and to temper their wrath with a tranquil spirit." (Swift 1983, 62)

In his later writings, Lactantius appears to depart from his initial positions as he praises Licinius' victory over Maximinus and Constantine for his victory over Maxentius at the Milvian Bridge in 312 (Cadoux 209). Swift comments that Lactantius "celebrates the subsequent victory as God's own triumph" (67). In fact, we see in the writings of Lactantius a shift from a largely Christian pacifist position in the pre-Constantinian Church to a growing Christian realist approach to war, military service, and defense of the Roman Empire. This shift occurs following the Christianization of the Roman Empire. Roland Bainton identifies this trend throughout the writings of the Fathers of the Christian Church:

> The blessings of Roman peace were appreciated. Irenaeus rejoiced that the roads were free from brigands and the seas from pirates. Tertullian was glad that Carthage enjoyed tranquility. Origen saw in the Roman peace a providential provision for the dissemination of the gospel. Christians did not wish to see the empire overthrown. Their opposition to war cannot therefore be explained on the grounds of hostility to the empire. (Bainton 1988, 75)

And so the ideological and theological tensions that existed between Christian pacifists and realists continued to exist long after the official church officially blessed or at least embraced the concept that Christians could serve in the military without compromising their faith.

In the third and fourth centuries, as the Christian community grew and as foreign powers began to threaten the established Roman order, more and more Christians entered military service (Pawlikowski 1993, 1014). This increased participation led to further theological discussion and debate. The third century was therefore marked by a change of

direction in Christian thought. The whole tenor of the discussion on Christian spirituality and warfare changed rather significantly early in the fourth century. Constantine first granted freedom of religion to Christians (313) and subsequently he declared Christianity to be the state religion of the empire. As a result, Christians participated more in civic life, and their appointment to civic positions gained acceptance among the community of believers.

Saint Ambrose and Just War

Some of the foundation stones for the Christian ethic of war were set in place by one of Christianity's greatest bishops, Saint Ambrose of Milan (339-397). Although Ambrose was born into a privileged existence, his family endured suffering for the faith, as some of its members suffered martyrdom in the persecution of the Emperor Diocletian.

As a young student Ambrose showed real promise for future scholarship in both classical and juridical studies. He advanced rapidly in civic service, and was assigned as Governor of the provinces of Aemilia and Liguria in Italy (Daniel-Rops 1962, 346). Within a relatively short period of time, the young Ambrose proved himself a skilled politician, administrator, and orator, but he was also noted for his deep spirituality. As a result, while still a public official, he was elected by his Christian community to assume the position of Bishop of Milan. He accomplished all this before his fortieth birthday in 374. Ambrose's selection and accession to the episcopacy of Milan reflects a societal openness that marks this historical era:

> In the same way the functions of the city magistrates as the representatives and protectors of the people passed to the magistrates of the new society--the Christian bishop. While the former had become mere puppets in the hands of the bureaucracy, the latter was the one independent power in the society of the later Empire. The choice of the bishop was the last right the people preserved, and we know from countless instances how eagerly they availed themselves of it. A man who had the gift of leadership and who was trusted by the people was liable to be elected, whether he wished it or not. In the case of Saint Ambrose we see a high secular official, who was not even baptized, being chosen bishop of the most important See in Northern Italy by popular acclamation and ordained in spite of his personal wishes. (Dawson 1961, 31)

Soon, this popular bishop, who was the confidant of emperors, kings, and paupers, would inspire Augustine by his teaching and then welcome him into the community of believers at the Cathedral of Milan.

Ambrose was a man of deep faith, unwavering conviction, and moral courage. In 390 he excommunicated Emperor Theodosius after this ruler ordered the slaughter of seven thousand people in Thessalonica. After the murder of a prominent Roman, Theodosius had wanted to send a strong signal of his resolve to avenge the murder and squelch any insurrection. After the slaughter, Ambrose showed great moral courage in his public criticism and ecclesiastical censure of the emperor. Theodosius was forced to confess his sins and humble himself publicly as a sign of penance; he was then reinstated into the Church. Thus, Ambrose teaches a great moral lesson; in chastising and humbling Emperor Theodosius, he asserts that civic leaders are bound by the constraints of justice and mercy in their administration. In short, Ambrose insists on the limits of force, even by an emperor, a key step in developing just war theory.

In his classic work *On the Duties of the Clergy,* Ambrose borrowed freely from the ideas of the Roman philosopher Cicero. Most notably, he adopts the Roman concepts of just war (Cahill 2001, 75). While justifying war in certain situations, Ambrose warned

Christians that the Gospel forbids the use of violence for self-defense. Bainton quotes Ambrose: "I do not think a Christian, [as] a just and wise man, ought to save his own life by the death of another; just as when he meets with an armed robber he cannot return blows lest in defending his life he should stain his love toward his neighbor" (Bainton 1988, 90).

Swift comments: "To a large degree Ambrose was a public man, and much of what he had to say on war and violence was a part of his whole approach to the rights and responsibilities of temporal rulers" (1983, 104). Like his student, Saint Augustine, Bishop Ambrose reads Romans 13:4 in a literal way. Guided by Saint Paul's pericope, he sees the hand of God in the decision-making and rule of civic leaders. He helps us understand one aspect of the principle of discrimination. In insisting that his clergy be exempt from military service, Ambrose maintained that the duty of the clergy affects the soul, not just the body. He forbids his clergy to participate in acts of violence or physical coercion, writing that "interest in matters of war seems to be foreign to our [clerical] role" (Swift 1983, 108). For Ambrose, the role of the clergy must remain one of peace, not one of arms and warfare:

> [Ambrose] presumably had never entertained any scruples against military service, because he had been the [Roman Legion's] Praetorian prefect of northern Italy before being impressed into the bishopric of Milan. Christian participation in war was rendered easier for him because the defense of the empire coincided in his mind with the defense of the faith. The barbarians were Arians. The accommodation of Christianity and military service was facilitated for Ambrose by borrowings from Stoicism and the Old Testament. (Bainton 1988, 90)

In holding that clergy, by virtue of their vocation, be exempt from military service, Ambrose points fourth century Christianity towards a Roman understanding of just war. "Ambrose says quite plainly that the kind of courage which is involved in defending the

empire against Barbarians, or protecting the weak on the home-front or allies against plunderers is wholly just" (Swift 1983, 98).

Designating the conditions under which going to war is just (*jus ad bellum*), Ambrose calls war of a defensive nature "justified war." In reflecting on the holy wars of the Old Testament, he also remarks that, when requested by God, any war resulting in territorial expansion must also be labeled a just war. Next, he urges those involved in war to be people of integrity, and, as such, to honor agreements and promises to the enemy. He also recommends that mercy be extended to the defeated enemy. Most importantly, he asks those who wage war and those who fight in them never lose sight of the ends of a just war: the establishment of a just peace. This is a lesson that he passes on to one of his students, a young man from Africa whom he eventually befriends, converts, and then empowers to become one of the great spiritual and intellectual giants of Western Civilization: Augustine of Hippo. Some consider that, in converting St. Augustine, Saint Ambrose accomplished the greatest benefit to Christian Civilization.

Saint Augustine

While still a relatively young man, Augustine of Hippo (354-430) listened intently to the sermons and catechetical instruction of the Bishop of Milan, Saint Ambrose. Like Ambrose, Augustine was influenced by the precepts of the Roman philosophy of just war. Similarly, like Ambrose, he rejected the use of force for self-defense or self-preservation. He did allow the possible use of force to preserve the civil order and common good, thus furthering the discussion for the development of a Christian theory of just war.

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Just as earlier Fathers of the Church had done, Augustine wrestled with the apparent contradictions in various parts of the New Testament. He also felt the tensions of being a follower of Christ and a citizen of the Roman Empire. Towards the end of his productive and fascinating life, while struggling with these contrasting demands of the earthly and heavenly kingdoms, Augustine formulated a moral compromise for Christians intent on meeting the responsibilities of both. He addresses these issues in his timeless classic: *The City of God*. In this book, "Augustine ... provide[s] an elaborate theological rationale for Christian participation in the affairs of the world, not least in its governance. From Roman political theory and Christian eschatology he fashioned the classic statement of the just war tradition" (Appleby 1999, 40).

Christians have traditionally awaited the *parousia,* or second coming of Jesus Christ to this world. Thus, they view themselves as people caught in a transition between the present and the future when Christ will come again. As a transitionary people, they view themselves as 'other worldly' or as people who stand apart or remain separate from the concerns of this secular, sinful world. As such, Christians have responsibilities and loyalties to both the city of men and the city of God. One of the realities of the present time is that we live in a world of strife and war, a problem that Augustine faced with courage and intelligence.

As the threat of a barbarian invasion intensified, so too did arguments for and against Christian participation in war: "Early Christian writers assumed war was evil and participation in war morally questionable" (Smurl 1979, 3710). After Constantine's conversion and his enthusiastic promulgation of Christianity in the Empire, Christians assumed an ever more proactive role in the governance of the world. Now, instead of

seeing themselves as apart from the world, they felt more and more a part of the world. As a result, more and more Christians were drawn into the political life and mainstream of the city of men.

War for Christians took on a different meaning. Force was now viewed as a viable way to maintain the empire and provide it with security and protection. Augustine, however, had a deep hatred of war and the suffering it brought. As Deane notes:

> Almost every one of his references to civil or international war is bitterly sorrowful; he always remembers the suffering and misery that war brings in its wake, especially for its innocent victims. ... His own experiences and the age of plundering and slaughter in which he lived left him with a deep hatred of war and a great scorn for those who thought that conquest and military victories were glorious and noble accomplishments. (1963, 154)

The fifth century was an age of political and theological transition. Augustine, along with his contemporaries, foresaw uncertainty, insecurity, and potential bloodshed in their future; these factors inspired him to develop his seminal ideas on the doctrine of just war.

In writing a justification for Christian participation in the affairs of the secular world, Augustine stressed that Christians should willingly accept their civic duties, which included defending the Roman Empire from enemies both foreign and domestic. Scott Appleby suggests that Augustine's theological rationale for a Christian's participation in the world's agenda may be his most notable achievement: "From Roman political theory and Christian eschatology ... he fashioned the classic statement of the just war tradition ... and captured the ordinary Christian's sense of divided loyalties" (Appleby 1999, 1-2). As noted above, Augustine's just war theory was adopted from the writings of Cicero, where it appears only once: "Just wars are usually defined as those that avenge injuries" (*ulcisci injurias*)." War was justifiable, according to Augustine, "when a people or a city

neglected either to punish wrongs done by its members or to restore what it had wrongly seized" (Russell 1987, 112).

Lynn Miller states, "The [just war] doctrine first took shape in Christian moral theology at a time when the Church was attempting to become the universal religion of a universal order" (1964, 254). Augustine manages to balance the tensions of earthly existence with the demands of Christianity. In particular, he comes to grips with the strong pacifist teachings of the scriptures and the pacifist sentiments of the early Christian Church. As Cahill notes:

> Since the entire meaning of Christian existence is to order all things in relation to God as the highest good, Augustine explains the justification for war in terms of a duty of Christian love, not just as an earthly social necessity. Augustine is aware that this justification of violence seems to contradict the teachings of Jesus. Considering the Sermon on the Mount (Matt. 5:38-48), in which Jesus tells his followers to turn the other cheek rather than repay violence with violence, Augustine answers that such sayings should not be taken literally. The command to reject violence is a 'precept with regard to the preparation of the heart, and not with regard to the visible performance of the deed.' It symbolizes a non-resistant and self-offering disposition, according to Augustine, but does not necessarily mean that no violence is ever allowed. A loving disposition can still be present, he thinks, even when it is necessary to kill. (2001, 76)

And so, Augustine formulated his just war principles at a time of great urgency and political crisis, a time in history when the security of the Roman Empire was threatened by foreign invaders. No stranger to war, Augustine survived Alaric's invasion of Rome in 410. His personal experiences of the horrors of war and how war changed the hearts and lives of people would affect him for the remainder of his life. Augustine offers his theory of just war to outline conditions "… under which war might be tolerated to avoid some greater injustice" (Smurl 1979, 3711).

For Augustine, just cause, legitimate authority, and right intention are vital elements in any attempt to evaluate whether or not war is just. These factors pinpoint motivation, where war, if waged out of love of God and of neighbor, can help achieve the ultimate objective of war, that is, establishing a just and lasting peace. In these circumstances, war can reflect a Christian's love of neighbor and is therefore morally justifiable. Next, Augustine discusses the need for a just authority to declare a war. "Augustine held that the natural order, which is suited to the peace of moral things, requires that the authority and deliberation for undertaking war be under the control of a [legitimate] leader" (Deforrest 1997, 4). Thus, for Augustine, legitimate authority is a necessary component in order to wage a just war. Following the example of his mentor Ambrose, Augustine builds his just war arguments on the foundation of Roman principles and philosophy. So, he fashions his just war (*jus ad bellum*) argumentation on the contributions of Cicero.

In placing the Roman criteria for just war within a Christian context, did Augustine set out to provide the parameters for a Christian definition of just war? Given the relatively few passages that Augustine devotes to the topic of just war, the answer is generally no. Augustine did not create laws for the regulation of war or write guidelines for the conduct of nations seeking to use force justly. The medievalist, Frederick H. Russell said:

> It is possible to reduce Augustine's just war to three simple criteria: legitimate authority (including God), the just cause of avenging injuries, and righteous intention. Yet, any such attempt is bound to be a distortion that masks his inner turmoil and renders explicit assumptions that were at best implicit in his writings. His scattered thoughts were not systematic precedents for future acts. ... For him the burden of proof lay upon those who wished to go to war. His chief value was to explore how to think about war in a Christian context, and thereby to bring discussions about it within the bounds of moral discourse. (Russell 1987, 113)

It might be suggested that, instead of trying to outline the parameters of what makes a war just, Saint Augustine in reality set out to create "an ethical guide for the practicing Christian who also had to render unto Caesar his services as a soldier" (Miller 1964, 255). So, it may be argued that Augustine's focus was spiritual, not legal, a view to be developed in the last chapter of this dissertation. Augustine did, however, provide humanity with a corpus of reflection on war and peace that continues to influence the dialogue of war and peace to the present day:

> Augustine wrote on all aspects of warfare from a moral and spiritual viewpoint. Since he considered war as inherently contrary to the natural order, he developed a set of criteria to determine when it was morally justifiable to go against the natural order. The morality of war could not be presumed, according to Augustine; the ruler had to establish a just cause. Augustine also added guiding norms for the conduct of war once it was launched. He likewise devoted considerable time to the qualities that should mark a 'spirituality of national service,' as it were, highlighting the virtues that should characterize the true Christian soldier. (Pawlikowski 1993, 1015)

Building more on moral than legal principles, Augustine used Cicero's foundation to focus on the concept of right intention in declaring war. He offers several points of guidance. For a war to be just (*jus ad bellum*): (a) it must have a just cause, (b) be declared by rightful authority, and (c) be waged with rightful intention. Augustine has little or no discussion of a likely chance of victory. Nor does he describe justice during war (*jus in bello*). For him, defensive wars are almost always just since they aim to prevent or correct the unjust aggression of the enemy. Still, he would also hold that offensive wars may be waged justly given these two scenarios: "War may be waged against a state if it refuses to make reparation for wrongs committed by its citizens, or if it fails to return property that has been wrongfully appropriated" (Deane 1963, 160).

As noted, after outlining the major criteria for declaring a just war, Augustine

offers little insight into the critical area of just behavior in war, but he does speak to the

importance of intention and the attitudes of those who declare and those who must fight

in war. Cahill remarks:

> Like most pre-modern authors, Augustine does not place much emphasis on
> criteria for just conduct in war [*jus in bello*] once war has been declared. He is
> more concerned with the reasons for going to war in the first place, and on
> preserving a Christian attitude even if one is engaged in the taking of life that war
> demands. (2001, 77)

Augustine, who provides solid guidelines for the just declaring of war, also shows great

concern for the combatants who must wage war. As a result, Augustine's unwavering

focus on right intention and focusing on Christian love and establishing justice provide

warriors with a solid foundation for just behavior in war.

John Pawlikowski writes that, contrary to the opinion of those who see the most

critical contributions of Augustine to deal with declaring or waging just war, the

Augustinian teachings on peace are, in reality, more significant:

> [Peace] was the goal of his entire spirituality of warfare. In fact, there is so much
> antiwar rhetoric in parts of Augustine that, taken in isolation, he might appear an
> ardent supporter of a pacifist spirituality. For Augustine, peace was such a good
> thing that a Christian ruler, under certain conditions, could wage a war in order to
> restore or preserve peace. His just war spirituality was not intended as a guide for
> ordinary believers but rather for Christian kings. (Pawlikowski 1993, 1015)

Peace, then, for Augustine, is the primary goal of any just war. In fact, "Augustine held

that the only reason which justified war was the desire for peace. Peace is not sought in

order to provide war, but war is waged in order to attain peace" (DeForrest 1997, 4).

Augustine warned that wars fought without the final goal of peace are "self-destroying, or

short-lived, a truce between wars" (Deane 1963, 158). Peace must remain the object of desire of those who declare war, wage war, or fight in wars. Augustine, therefore, keeps the focus on right intention and the goals of war. Similarily, he demands that those who wage or fight in war keep that focus from the beginning to beyond the end of hostilities.

In both his famous *Reply to Faustus the Manichaen*, and in the nineteenth chapter of the *City of God*, Augustine illustrates that he is more concerned with war's effect upon people than with the parameters of defining what makes war just. He warns that a war's most horrible outcomes are found in their effects on people. He fears that, filled with a lust of power and revenge, people will come to love war and violence resulting in a cruel and inhuman focus:

> Let every one, then, who thinks with pain on all these great evils, so horrible, so ruthless, acknowledge that this [war] is misery. And if any one either endures or thinks of them without mental pain, this is a more miserable plight still, for he thinks himself happy because he has lost human feeling. (Augustine 1952, 515)

Augustine warns of war's dehumanizing effect on the individuals who declare war or fight in wars. In essence, Augustine would have been an exemplary military chaplain. While he was able to justify morally why men might use force to resolve interstate conflicts, he was never fully comfortable with that solution and worried what effects the use of force would have on all concerned. He recognized the need to monitor constantly the motivations and intentions of those waging war to ensure that its dehumanizing effects would not result in their losing focus on the Christian motivation for waging war, which is love with the goal of establishing a just peace. If given the opportunity, he might have welcomed the chance to play the role of noncombatant

clergyman while tending to the spiritual needs of his military flock, to counter with spiritual weapons the dehumanizing effects of war on those who were called to combat.

Richard McBrien, who writes eloquently on the achievements of Saint Augustine, reflects succinctly and accurately on the contributions of this great Church Father. McBrien provides a great summation of Augustine's contributions to Christianity, specifically, to the development of the theory of just war:

> Augustine regarded war as both the product of sin and a remedy for it. In a world corrupted by sin, the use of force by public authorities is a legitimate means of avenging evil. Public order must be preserved. On the other hand, Augustine did not approve of killing in self-defense. He separated individual morality, which must be dictated by the Gospel mandate of loving one's enemies and turning the other cheek (Matt 5:39) from social morality, which is for the sake of the common good. (McBrien 1981, 1035)

These thoughts will be further developed in Chapter Six of this dissertation.

Islam and Jihad

For decades, political analysts have discussed the perceived clash of civilizations or philosophical differences dividing the Judeo-Christian West from the Islamic East. Some theorists point to the substantive theological and even sociological differences between the two cultures, while ignoring their similarities. They point to the fact that the Judeo-Christian West possesses a vibrant theory of just war and question the absence of one in the Islamic world. In reality, many in Islam have adopted their own just war principles and guiding criteria. Some theorists like James Turner Johnson and John Burke view the major tenets of the West's just war theory as an integral part of Islamic theory:

> ...Islam's engagement of war, in the context of *jihad,* resembles that of Christianity in that it discusses both the just reasons for war [*jus ad bellum*] and the basis for a just conduct of war [*jus in bello*]. Wars are justified 1) to defend either one's self or nation, 2) to come to the aid of others who are suffering persecution, or 3) to call other peoples to God's message. In terms of conduct, war must 1) be directed at combatants, not noncombatants, 2) avoid excessive destruction and cruel tactics, 3) seek to save as many lives as possible, and 4) be simply a means of repelling the oppressor, not an end-in-itself. At the same time, as John Kelsey points out, *jihad* cannot be understood apart from the Islamic insistence on establishing a universal just social order, steeped in God's model of righteousness as contained in the Abrahamic traditions of Judaism, Christianity, and Islam. More so than its two Abrahamic predecessors, Islam, as initially manifested by the prophet Mohammed, seeks to exemplify for others how political power and righteousness are to be entwined. (Burke 2002, 56)

While John Francis Burke presents the Islamic theory in somewhat standardized format, proponents of Islam really do not adhere to any theological, philosophical, or sociological template or universal understanding of a theory of just war or *jihad.* When queried about "just war," several Islamic chaplains unanimously agreed that there is no single approach or tradition to war in Islam. While they did agree that concepts of war exist in Islamic culture, they could not point to a uniform theory from which one might construct a unified approach to war and peace. Given the nature and diversity of Islam, these ministers in the Muslim faith did not find this absence unusual, troublesome, or surprising.

There are more than one billion Muslims living in virtually every culture and nation, and they are represented among every race in the world. Only 15% to 20% live within the geopolitical confines of the Arab world. Fully one fifth of the Muslim population lives in Sub-Sahara Africa, and the world's largest community is found in Indonesia. And so, there are many political ideologies, theologies, and philosophies of

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life within the Islamic World. There is one significant difference, however, between the Islamic and Judeo-Christian Worlds.

In the Western World generally, religion no longer dominates everyday life. Church and State, civic life and religious affiliation are all kept separate in both law and most aspects of daily life. Islamic culture is radically different. Ideally, in the Muslim world, secular and religious, political and religious aspects of life intersect daily. In their society, these elements must not be separated. For devout Muslims, "Islam," which means submission to Allah or God, *is* life. Yet, just how Islam should affect societal life daily is not really clear. Opinions vary from nation to nation, culture to culture, and cleric to cleric, reflecting the indigenous realities of local situations.

Thomas Lippman, author of *Understanding Islam* states in a newspaper interview that Islam is no monolith: "Islam has no Vatican, and so there is no central authority.... Although Islam is a 1400 year old faith with 1.2 billion followers [and with] core tenets that every Muslim believes..., you can find an exception to virtually every generalization you hear" (Sands 2001, 32). Just as in the other major faith groups, "there are competing traditions [within Islam]... vis-à-vis matters of war and peace" (Burke 2002, 56). It naturally follows, then, that Muslims have no common approach to war or a just war theory. So how does one define the Islamic approach to war? One author explains:

> Islam emphasizes action, performing the will of God. It more closely resembles Judaism with its focus on following the law than Christianity with its emphasis on belief. Muslims are enjoined to act, to struggle (*jihad*) to implement their belief, to lead a good life, to defend religion, to contribute to the development of a just Islamic society throughout the world. (Esposito 2002, 5)

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Concerning war, many Muslims view war as a final option, a last resort, and, once war is declared, it must be waged under strict rules of conduct. The Prophet Mohammed, who instructed his followers "to fight in the name of God and in the path of God," thus outlined some *jus ad bellum* and *jus in bello* criteria for Muslims to follow. Fighting in the name and in the path of God, Mohammed restricted wars and prohibited those "fought for wealth, power, fame, honor and the like..." (Kelsay 2000, 225). Defining war, as it were, in a divine light, Mohammed sought to ensure that certain *jus ad bellum* criteria were followed. He did not, however, outlaw war or call his disciples to espouse pacifism. To the contrary:

> Like Christianity, Islam permits fighting in self-defense, in defense of religion, or on the part of those who have been expelled forcibly from their homes. It lays down strict rules of combat that include prohibitions against harming civilians and against destroying crops, trees and livestock. As Muslims see it, injustice would be triumphant in the world if good people were not prepared to risk their lives for a righteous cause. One reads in the *Qur'an* [2:190]: "fight in the cause of God against those who fight you, but do not transgress limits. God does not love transgressors." It also states, [8:61] "If they seek peace, then you seek peace. And trust in God for He is the One that hears and knows all things...." War is therefore the last resort, and is subject to the rigorous conditions laid down by the sacred law. (Abuzaakouk et al. 2001, 9)

As Ambrose and Augustine did in the Christian just war tradition, Abuzzaakouk links the Islamic approach to war to an understanding of peace. This is not surprising, for the word Islam, "...is derived from a root which means peace and submission; for Moslems, peace is attained through submission to the will of Allah and ιn studying and following the teaching of the Qu'ran" (Ibid., 10). A related common expression or concept is *jihad*, which is often misunderstood or misrepresented.

The term *jihad* has been an integral concept to the religion of Islam since its foundations in the seventh century. Contrary to our post-9/11/01 media image, *jihad* does

not necessarily mean *holy war* since there is no term holy war in the *Qu'ran*. The term

jihad, which is literally translated as "struggle," means primarily an interior struggle

(although it has also been applied historically to external struggle).

On June 6, 2002, just ten months after the terrorist attacks in New York,

Washington, and Pennsylvania, senior Zayed Yasin was selected by a committee of

faculty and students to deliver Harvard University's valedictorian address. Yasin chose as

the title of his speech, which was approved in advance, "American *Jihad*." The use of the

term *jihad* in the title of the speech earned Yasin national media scrutiny, while

provoking controversy and concern in Harvard Yard. In his speech Yasin tried to clarify

the true meaning of *jihad* for his fellow students, faculty, and guests:

> *Jihad* is a word that has been corrupted and misinterpreted, both by those who do
> and do not claim to be Muslims. "And we saw last fall, to our great national and
> personal loss, the results of this corruption," he said. Invoking the significance of
> personal moral growth, Yasin defined the true meaning of *jihad* as the
> determination to do right, to do justice even against your own interests, and as an
> individual struggle for moral behavior. (Ferdinand 2002, A3).

In Islam, *jihad* or struggle takes place on different levels, and scholars refer to

four types or categories of *jihad*: (a) *jihad* is a personal, moral, and spiritual struggle that

is a critical component of the everyday spirituality of a Muslim; it is a personal war or

struggle that helps individuals overcome their self-centeredness and adhere more closely

to the teachings of Islam, especially those teachings dictated in the *Qu'ran*. In this sense

jihad is understood to be an internal struggle against the evil that helps Muslims discover

their true Islamic center or self; (b) *jihad* is also translated or interpreted to be a societal

struggle; all who profess Islam are called to carry on teaching and preaching of Islam to

an unbelieving society, in an unbelieving world. Here, *jihad* is translated as a struggle for

decency and goodness in the world; (c) *jihad* is also translated as personal witness to the life and teachings of Islam and to Mohammed. In this interpretation, all who call themselves Muslim must set a personal example witnessing to the sovereignty of Allah, and leading others to submit their lives to the will of God. Thus, Muslims are to be missionaries and attract others to the faith through the power of their own personal witness to Islam.

According to one scholar, Sufis, or Muslim mystics "transform holy war into a spiritual doctrine, a battle against one's own imperfections" (Halevi 2001, 2). This interpretation reminds us that *jihad* can be described as an ongoing conversion. Just as the lives of the prophets are viewed as examples for others to follow or beacons of light for the rest of humanity, Muslim believers must also lead lives that illumine the road for others to follow (Morgan and Lawton 1996, 222).

Finally, (d) *jihad* may be translated as (exterior) "holy war," a war prosecuted against those who persecute the followers of Islam or those who impede the spreading of Islamic faith and culture. In some respects, this meaning reflects the thought of Francisco Vitoria who, in the 16th century, claimed that war may be justified to oppose restrictions on the spread of the Christian faith. While this translation of *jihad* is only one of many translations, it is the one most prevalent in the minds of many in the Western world today. This interpretation, however, is not new as *jihad* was used in the past with this meaning. More ominously, some Islamic extremists are using the term today to advance their radical principles and ideals in their "holy war" against their enemies.

Jihad, then, means primarily to strive or to struggle in the way of Islam. It is a personal, communal, and at times international struggle to achieve the will of Allah. It is

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a call for all believers to lead a life that bears witness to the teachings of the Prophet

Mohammed and to the spirit of the sacred writings of the *Qu'ran*. It is also a call to

proselytize through personal example, preaching, and education. In addition, the call to

Islam takes on a trans-personal, trans-communal, trans-national dynamic. Muslim

societies pray and work to establish a just and permanent peace in the world, "...one

which recognizes the differences and distinctions--religious, cultural, social and

economic--of the peoples of the world as legitimate.... The struggle *(jihad)* for a world

government--whatever its form--has now become an absolute and inevitable necessity"

(Morgan and Lawton 1996, 255-256). Some interpret this aspect of *jihad* as a call to war

and not conversion. In light of this interpretation:

> Many Muslims today believe that the conditions of their world require a *jihad*.
> They look around them and see a world dominated by corrupt authoritarian
> governments and a wealthy elite, a minority concerned solely with its own
> economic prosperity, rather than national development, a world awash in Western
> culture and values in dress, music, television, and movies. Western governments
> are perceived as propping up oppressive regimes and exploiting the region's
> human and natural resources, robbing Muslims of their culture and their options
> to be governed according to their own choice and to live in a more just society.
> Many believe that the restoration of Muslim power and prosperity requires a
> return to Islam, the creation of more Islamically oriented states and societies.
> (Esposito 2002, 27)

Given the threat of nuclear annihilation and the proliferation of weapons of mass

destruction, many Muslims and Islamic governments are committed to bringing about a

new world of justice and peace. In many ways, this aim reflects the same goals of world

justice and peace that are espoused by devout Christians, Jews, Hindus, Buddhists, and

people of good intentions everywhere. Devout Muslims believe that those who have

already surrendered to the will of Allah are now empowered to build a new society by

their word and example more than by the use of force: "Islam holds that desiring this

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world order, working for it, and sacrificing to bring it about, are constituents of virtue and

God-consciousness (*taqwa*). To lay down one's life in the process of bringing it about is

shahadah--martyrdom--earning a place in eternal sacrifice. No nobler or stronger

motivation is possible" (Morgan and Lawton 1996, 256). This definition is strikingly

different from that portrayed by the media for the suicide bombers who operate in present

day Palestine.

Discounting exceptions, which exist in every system, true *jihads* are never

conducted against other Muslim believers or nations, and *jihads* rarely if ever have as

their goal the destruction of societal infrastructure or the governments of non-Muslim

nations. Unfortunately, today's extremist Islamic groups, who have declared a *jihad* that

has received limited support within the Islamic World, give *jihad* a very different

meaning. Their activities, politics and theological interpretations have received extensive

coverage from the media so and now many non-Muslims equate Islam within the limited

parameters of these extremist philosophies.

> Jihad has been interpreted by Muslims in different ways. The Muslim sect of the
> Kharijites has elevated jihad to one of the five pillars of Islam – making it six
> pillars..., [but] most Muslims disagree with this extremist position of some
> Muslims and advocate peace. These Muslims view jihad as a spiritual struggle
> against evil in a metaphorical sense. For the most part there is a greater and lesser
> jihad. The Greater Jihad is the internal spiritual struggle of the Muslim world
> toward submission to Allah. The Lesser Jihad is the Holy War against non-
> Muslims based on the principle of belief. It is the latter that has caused the most
> concern amongst Westerners. Is that concern warranted? Many think so. Islamic
> scholar Jamal Badawi ... insists that Jihad is permitted only in self-defense or
> against tyranny of oppression--not as a tool to promote Islam. But ancient Islamic
> cultures were built as much by force as by persuasion. (Slick 1998, 1)

Who then is right? Are followers of the Prophet Mohammed commanded to reign

terror and death on the "infidels" of the Western World, those with a different

theological, cutltural, socio-econimic, and political orientation? Muslims need look no further than the personal example set by the Prophet Mohammed himself to find further, if minimal, *jus in bello* guidance:

> Fight in the name of God and in the 'path of God.' Combat only those who disbelieve in God. Do not cheat or commit treachery, nor should you mutilate anyone or kill children. ...Whenever you meet your polytheist enemies, invite them to adopt Islam. ... He of the enemy who has reached puberty should be killed, but he who has not should be spared. The Apostle of God prohibited the killing of women. (Qu'ran quoted in Kelsay 2000, 224)

In the dictates recorded for his followers in the sacred *Qu'ran,* the Prophet offers clear *jus ad bellum* and *jus in bello* guidance. Other guidance may be found in the writing of Islamic jurists, commentators, and clerics who help set limits to the activity of Muslim combatants within the realm of behavior in war (Kelsay 2000, 224).

Some scholars are less inclined than James Turner Johnson and John Francis Burke to link the Islamic concepts of just war with that of the Judeo-Christian just war tradition. For instance, Thomas Pangle and Peter Ahrensdorf view the Islamic approach to war with more critical eyes, highlighting the differences between the two as follows:

> The jihad was the Islamic *bellum justum.* It was enjoined by God on all [Muslim] believers to be carried out by a continuous process of warfare, psychological and political, even if not strictly military. No other form of fighting was lawful, whether within Islamic territory or outside it. Moreover, no essential difference among leading jurists is to be found on this fundamental duty, whether in orthodox or heterodox doctrine. ...The enemy against whom *jihad* must be waged is not merely the outsider 'infidel' or non-Muslim. It is also those Muslims who have not accepted true Islam, [which] can only be Imami Shi'is Islam. Unlike polytheists and pagans, Christians and Jews, as 'peoples of the book--that is, as peoples whose religion follows in part the truth revealed in the Bible or the Koran--are not to be forcibly compelled to convert; they are, however, to be placed under civil disabilities that, it is hoped, will help to bring home to them the inferiority of their belief. (Pangle and Ahrensdorf 1999, 114)

Pangle and Ahrensdorf cite as their source a preeminent authority within Islam, Ibn

Khaldun (1332-1407). Ibn Khaldun insisted that offensive wars are not only just, but

quite possibly a religious obligation for all Muslims. These observations shed some light

on the violence and misunderstanding found in today's more radical Islamic movements

and their orientation towards a more radicalized understanding of *jihad* in the modern

world. Again according to Ibn Khaldun:

> Such just and holy aggressive war is due ... to the 'desire for vengeance'
> originating in 'anger for the cause of God and His religion;' all other kinds of war
> are unjust and due to a sinful desire for merely human vengeance. Ibn Khaldun
> thus brings out a radical implication of Islamic political theology: in the light of
> the truth revealed in the Koran, not only do Christians and Jews commit grave
> sins in opposing the Muslim *jihad* that may help save their souls; but in all wars
> among themselves or against pagans, the Christian and Judaic nations have a right
> and a positive duty to fight only to defend their (partially true) religion, or to
> assist in defending and advancing the religion of Islam. Since no war is just that is
> not a holy war, it follows that all the non-holy wars classified as just by the
> Christian theologians are in fact unjust. The Augustinian and Scholastic doctrines
> of just war, legitimating as they do what are in fact unjust wars, are profoundly
> immoral. (Pangle and Ahrensdorf 1999, 115)

On September 11, 2001, the United States was attacked by a fanatical and well

financed group of Islamic Fundamentalists whose "plane bombs" killed and injured in

New York, Washington, and Pennsylvania, about 3000 citizens from several dozen

nations. Now, with fundamentalist attacks in places like Jordan, Yemen, Pakistan,

Indonesia, Afghanistan, and the Philippines on the rise, more casualties are likely. Some

analysts blame the extremist philosophies, theologies, and politics of fundamentalists on

Islamic teaching. They point to a number of areas of Islamic thought that allow for an

extremist interpretation of *jihad* and their subsequent adoption by radical groups.

Especially relevant is the concept of the two worlds:

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Islamic Doctrine easily lends itself to extremist cooptation. Islam divides the world into two regions: *Dar al Harb*, or the house of war, containing all territories ruled by non-Muslims, and *Dar al Islam*, or the house of Islam, which is destined to dominate the former. In a world groping toward planetary interconnectedness, this Islamic doctrine--which justifies the madness of holy war--must be challenged by the Muslims themselves. (Halevi 2001, 1)

In reality, the followers of terrorists like Osama bin Laden have often replaced the traditional Islamic concepts of war and peace with a contemporary interpretation that capitalizes on traditions and passages from the *Qu'ran* that more closely align with their extremist doctrines. Such views support their call to all Muslims to conduct *jihad* under the banner of *their* interpretation of the Islamic faith. Having identified Western governments and ideologies as anti-Islamic, they see corrupt globalization as a Western attempt to export its media, propagate its culture, and influence the Islamic World. Although small in number, these Islamic extremists have gained a faithful following who are willing to die, if necessary, to stop the advancement of a Western culture that they view as fundamentally evil and contrary to the teachings of Islam.

Despite the horrific events of what some now simply refer to as 9 / 11, Halevi recommends caution: "It would be disastrous to declare Islam itself the enemy. For many Muslims, the doctrines of holy war and of *Dar al Islam* are irrelevant to their faith, and have in effect been allowed to lapse. ... Demonizing one of the world's great faiths is an affront against all religions" (Ibid., 3). Recently, Abdullahi An-Na'im, one of the world's leading Muslim scholars, responded to those who think radical Islam must be addressed with force and bombed into submission. It may be wiser, he suggests, to approach the Islamic terrorist activities as an insurgency rather than a war. The challenge of insurgency is best met, not with military force, but rather with political, cultural, and religious

dialogue accentuating the similarities, not differences, of the parties in question. Charity and understanding, reconciliation and peacemaking, plus sharing precious resources, will decrease the potential for conflict and enhance the quality of life for all. In that way, insurgency is constructively addressed and diffused. Another scholar agrees:

> The only legitimate and sustainable discourse that will change attitudes is an internal discourse. It is a mission that has to be done by Muslims. There are Muslim voices--human rights activists, democracy activists, intellectuals and so on--who need space and protection to convey their message from the inside. The question is: what is the rest of the world doing to make that possible, to facilitate or obstruct that process? I don't think there's a lack of voices or ideas or energy, but there is a lack of political space, a lack of resources and a constant struggle to maintain credibility in a region that feels besieged by global cultural and economic forces. (Reardon 2002, 19)

Perhaps it would serve both the Judeo-Christian and the Islamic worlds to develop a joint understanding of the concept of just war. Such an effort could provide a constructive departure point for future dialogue and a common understanding among the two great civilizations:

> The Quran provides detailed guidelines and regulations regarding the conduct of war: who is to fight and who is exempted (48:17, 9:91), when hostilities must cease (2:192), how prisoners should be treated (47:4). Verses such as Quran 2:294 emphasize proportionality in warfare: 'whoever transgresses against you, respond in kind.' Other verses provide a strong mandate for making peace: 'If your enemy inclines toward peace then you too should seek peace and put your trust in God' (8:61), and 'Had Allah wished, He would have made them dominate you and so if they leave you alone and do not fight you and offer you peace, then Allah allows you no way against them.' (Esposito 2002, 32)

Abdullahi An-Na'im's insights highlight some shared principles illustrating the potential for future dialogue among Christian and Islamic scholars. As a point of departure, both great faiths adhere to the principle that the ideal is not merely the absence of conflict; it is a state of political, economic, and social conditions that produces peace

and justice for all. Despite differences that the Islamic and Christian traditions may have, this interpretation of *jihad* appears acceptable to all. It is an honorable struggle that all persons of good will and of every faith may and should embrace.

The Medieval Church

The medieval Christian Church influenced significantly the evolution of just war tradition, especially in defining the parameters of the two major categories of just war theory, discrimination and proportionality. From the ninth to the thirteenth centuries, groups such as the Vikings, Normans, and Saracens waged warfare that threatened the safety and quality of life in Europe. Every segment of society, from its rulers and warriors to its most vulnerable population, the serfs and other noncombatants, was at risk. As war weighed heavily on the minds and hearts of the total population, the people cried out for civility, peace, and reform.

Some of the first reform movements of the Middle Ages were a direct result of the refounding and reformation of religious orders. Saint Benedict (480-546), founder of the Benedictine Order, organized centers of prayer, labor, and scholarship at Benedictine monasteries such as the famous communities of Monte Cassino in Italy and Cluny in France. These monasteries sparked a religious, social, and political rebirth throughout Europe. For instance, regarding Cluny we read:

> The great reformatory movement emanating from the Monastery of Cluny aimed at the radical Christianizing of society by the purging of the Church, the subordination of the state to the reformed Church, and the enlisting of laity in the Church's service. To this end, Christians should make peace among themselves. Or if they would, then their warfare should be restricted by rules much more hampering than those of the traditional code of the just war. (Bainton 1988, 110)

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Infuenced by this same reform movement, synods or regional groups of Catholic bishops began to teach and legislate regarding the problems of society, in particular, the rampant warfare that ravaged their society and hurt their people. The first synods known to have addressed concepts of just war were held in France first at Charroux in 989, and then at Narbonne in 990. Ecclesial legislation passed by the bishops at these synods or local church councils ignited a peace movement that historians call *The Peace of God.*

An example of the legislation and episcopal guidance offered in this Peace of God movement can be found in the guidance of the Archbishop of Bordeaux, Gunbald, who in 989 called his bishops into session, asked them to address three evils that harmed their civil society and the people of God entrusted to their care. First, the bishops addressed the practice of forcing entrance into churches, monasteries, or other sanctuaries. They strongly condemned such violations and threatened to excommunicate anyone who robbed or forcefully entered the sacred ground of a church or religious foundation. This episcopal legislation created safe refuges where anyone could find shelter and protection. That same protection is still afforded in churches, mosques, and synagogues today. Muslims invoked the right of *sanctuary* at Bethlehem's Church of the Nativity in 2001, in an event that was covered by the world press. The Franciscan Friars honored their request and granted the Muslims sanctuary from the Israeli armed forces for more than a month.

Second, following this concept of discrimination, the bishops addressed the crime of robbing the poor. The bishops condemned such attacks and ultimately threatened excommunication to any who might rob society's most vulnerable class of citizens. In passing this legislation they afforded protection to those who could not protect

themselves and created a new legal status to protect the most vulnerable. Like

noncombatants in war, the poor were declared "off limits."

Third, the bishops condemned all attacks on clergy and religious by threatening

excommunication to all who might seize, beat, or attack any clergy not bearing arms.

Here we see clergy treated as a non-warrior caste and afforded the right of discrimination

in war. They were extended this right provided they remained noncombatants and did not

involve themselves in the conduct of war. In addition to the poor, religious and clergy

were now granted immunity from both attack and exploitation in war.

These ecclesial decrees significantly affected the development of just war theory.

They addressed the issues of sanctuary, discrimination, and the foundational principles

for the *jus in bello* criterion of discrimination in war. Both the Church and the civil order

had to comply with these new directives; those who did not comply were placed under

church interdiction and denied access to the sacraments (Thatcher and McNeal 1905,

412).

The medieval era was marked by a series of private wars that harmed the

innocents of society. The medieval historian, Henri Daniel-Rops, views the *Peace of God*

movement as a great advancement in society. From the viewpoint of just war theory, it

marks the first legal attempt to discriminate the most vulnerable and innocent elements of

society from the injustices of oppression and the horrors of war:

> The worst menace at that time was, and continued to be, the private war, which
> respected neither place nor age nor person, and often resulted in those deeds of
> inconceivable horror. ...The principal victims of these conflicts were, of course,
> the weak and innocent, defenseless villains and serfs, priests and monks whose
> resources covered the cost of such enterprises. It was against these repeated acts
> of private war that the Church launched her crusade for the 'peace of God'.
> (Daniel-Rops 1963, 349)

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The Peace of God movement spread throughout France and eventually influenced much of Europe. According to Daniel-Rops, the Church felt so strongly about the need to enforce the legislation of the Peace of God that it created its own militia to enforce the ecclesiastical directives of the Peace of God movement. Thus, the authority and power of the Church helped to ensure compliance by all (Daniel-Rops 1963, 350).

In 1063 the Peace of God was followed by a development called the *Truce of God*. The *Truce of God* listed specific times and seasons when opposing armies could legally conduct warfare. The parameters of the Truce of God were eventually broadened to follow the liturgical cycle of the Church. The truce outlawed combat from the beginning of Advent in early December to the Octave of the Epiphany in mid-January and from Ash Wednesday (the beginning of Lent), generally in March, to the Monday prior to the Octave of Pentecost about the end of May. Marian Feasts and the feasts of certain major saints (e.g., John the Baptist and the Apostles) also became "truce days." Later still other holy days and liturgical commemorations were added to the truce (Thatcher and McNeal 1905, 417-418). Put simply, by outlawing war for a significant portion of the liturgical cycle, the Church effectively addressed the proliferation of war that had previously plagued European society.

The Peace and the Truce of God were adopted throughout Christian Europe. The Lateran or universal church councils (1123, 1139, 1179, and 1215) would eventually apply these Peace and Truce of God restrictions to the universal Church, and then codify them in the Church's Code of Canon Law. The Peace and the Truce of God effectively

limited warfare and established successful *jus ad bellum* guidelines and some *jus in bello* direction for the declaring and the waging of war.

With these successes accomplished, the Church tried to limit the use of new and deadlier military technology:

> When the short bow began to be replaced by the more powerful crossbow which fired metal shafts, the Church attempted to restrict the use of the crossbow against other Christians. Paramount to its objections was the threat to cavalry that the crossbow presented in the hands of any commoner or foot soldier. The weapon was despised as unchivalrous by the mounted warrior. (May, Stadler and Votaw 1984, 114)

Unfortunately, although the Church was successful in regulating when war could be waged, in creating shelter and sanctuary for the vulnerable, and in discriminating clergy and the poor from the evils of combat, it failed in its attempts to regulate the use of military technology. Despite its failure to curtail the use of this technology, the Church was the first to question the appropriateness of certain types of weaponry and to attempt to prevent the use of certain types of military technology that it viewed as inhuman because it caused unnecessary pain and suffering to combatants. Roland Bainton would add that the ban on the use of the new military technology may have had more to do with maintaining the status quo of the era's social status (Bainton 1988, 123); it may have been just as much of a concern to protect the higher class warriors of the cavalry from defeat by the socially inferior archers).

The Church was more successful in its attempts to draft a code of conduct for warriors. This code, called the *Liber Feudorum* or Book of Feudal Laws, represents a code of conduct that outlines the parameters of *jus in bello* or just behavior in war. This

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code was formulated to outline just or acceptable behavior in war for those medieval

warriors and knights who proudly called themselves Christian warriors:

> In its broadest sense, the Christian ideal was the foundation of the whole chivalric
> code of honor. Not only did the Knight pursue glory and adventure in his exploits,
> he was expected to display loyalty, honor, truthfulness, courtesy, and mercy.
> Undoubtedly few met the high standards of chivalry, but the existence of the code
> served as a brake on the savagery and scope of warfare in an age when political
> leaders were generally unable to match the prestige and influence of the Church in
> controlling the nature or intensity of national or international conflicts. (May et al.
> 1984, 114).

James Turner Johnson calls the chivalric codes the foundation stones for future

justice-in-war principles. As shown by the Peace of God movement, synodal and council

directives, and the code of medieval Canon Law, the local and universal Christian Church

made significant progress both in controlling why and when war could be declared (*jus*

ad bellum) and in giving direction as to how war should be waged (*jus in bello*). These

advancements in just war theory and their support of the early chivalric codes factored

significantly in the growth and concept development of *jus in bello* principles.

The Holy War Tradition

In *Religion: The Missing Dimension of Statescraft*, Douglas Johnston reminds

readers that religion has been the source of consolation, hope, and healing in our world,

as well as the source of tension and bloodshed (Johnston 1994, 6). Humanity has seen

much killing in the name of God and the growth of religion, a practice that continues to

the present. Because Jesus' words in the scripture passages above lend themselves to

various interpretations, some consider these passages to be a divine mandate to use force

when the cause is just, including for the sake of religious motives. Some even interpret the passages to mean that Jesus authorized the use of force to further the Christian agenda and advance religion with force, when necessary. Such an orientation is referred to as the *Holy War School.*

In Luke 22: 36b, Jesus instructs his followers who do not own a sword to sell their coats and buy one. The Evangelist John reports that Jesus used physical force to cleanse from the temple the money changers and sellers of sacrificial animals: "And making a whip out of cords, he drove them all, with the sheep and the oxen, out of the temple; and he poured out the coins of the money-changers and overturned their tables" (John 2: 14-15). In yet another controversial passage, similar to the Lucan passage: "Do not suppose that my mission on earth is to spread peace" (12: 51), Jesus, the Prince of Peace, warns, "I have come to set a man against his father, and a daughter against her mother, and a daughter-in-law against her mother-in-law; and a man's foes will be those of his own household" (Matthew 10: 34-36).

While Augustine is the first church leader to suggest that force may be used to defend orthodoxy or forward the Christian faith, the Emperor Heraclius was the first ruler to invoke the name of God in declaring a Holy War against the Muslims when they first conquered the Holy Land in 637 (Garraty and Gay 1972, 238). "By 700, Islam had deprived Christianity of its wealthiest regions, its most intellectually prominent cities, and its most venerable shrines. Syria, Egypt, Alexandria, Carthage, Jerusalem, all fell into the hands of the Prophet's followers, who in 673-678 and again in 717-718 laid siege to Constantinople itself" (Russell 1968, 63). By the time of the great Christian crusades of the 11th through 13th centuries, the concept of holy wars had become commonplace in

Christianity. The motto of the crusaders reflects the connection between war and the Creator: 'God wills it!'

Saint Bernard of Clairvaux (1090-1153) preached a crusade and wrote a monastic rule for a religious order of warriors called the Order of the Temple. This ecclesiastical group had its charter approved in 1148 at the Council of Troyes. Its main apostolic duty "… would be to defend the Holy Land against renewed attack by the infidel [Muslims]" (Daniel-Rops 1963, 141). Believers felt it their Christian duty to win back the holy places conquered by Muslim armies and check the spread of Islam.

The Muslims likewise believed that their mission was commanded by God to spread Islam (meaning submission to Allah) throughout the world. Jews, Christians, and Muslims were often the target of "holy wars." Moreover, after the 11th century, people or movements who were deemed heretical or who threatened orthodox positions on established church dogma or teaching were considered legitimate targets for holy war:

> Until the eleventh century, heretics had been treated with mildness and restraint, suffering no more than reprimands or harassment. Now murders of heretics by mobs … became more common … because the reform spirit was at its height. The same widespread and fervent breath of reform that made people long to go on pilgrimages, to enter ascetic monasteries, and to become mystics also impelled them to attack and murder heretics and Jews, and to undertake holy wars against Moslems. (Russell 1968, 153-154)

Ecclesiastical militia were formed in the territories of Germany and France to ensure civil order and establish peace. As the church took a more active role in accepting civic responsibility for maintaining societal order and peace, church councils issued decrees allowing for the creation of militia to maintain stability and conformity. Once ecclesiastics were given temporal as well as spiritual authority in European society, the concept of holy wars took on new meaning. Bishops amassed armies while monastic

orders such as the Templars, the Hospitalers, and the Knights of Saint John took up the

sword on behalf of the church and in the name of God:

> The prince bishop in his own person already combined church and state. He was a
> bishop. He was a prince and he had armies. Why should he not then as a bishop
> call upon the troops which he commanded as a prince in order to enforce the
> church's peace? ... Implicit in these attempts to enforce the peace was the idea of
> crusade, that is to say, of a war conducted under the auspices of the Church for a
> holy cause--the cause of peace. (Bainton 1988, 111)

It seems understandable, if not persuasive, that in the absence of any "homeland

defense" the popes would feel justified in calling for "holy wars" to protect Christian

Europe and stop the advances of the so-called Muslim infidels. Their actions on behalf of

Christianity might halt the spread of Islam and check the advance of a culture viewed as a

threat to both the theological and cultural precepts of Western Christianity.

And so, a number of popes fought to protect, in their view, Western European

Civilization, and halt the advance of the Islamic influence. The popes did not need to

look any further than Constantinople or the Iberian Peninsula to comprehend the threat

that the spread of Islam posed to society and to the church. In their estimation, the cause

for war was both just and holy. It is within this historical perspective that the papacy

directed the "holy wars" that are known today as the Christian crusades of the 11th and

12th centuries. The Church and the state moved from *pax Dei*, peace of God, to a *bellum

Romanum*, Roman war (Garraty and Gay 1972, 382):

> [Pope] Urban II convened the Council of Clermont in 1095 to secure reforms,
> restore order to civic society, consolidate Papal temporal and spiritual power, and
> to launch the First Crusade, a holy war, to liberate the sacred places in the holy
> land from the Moslem infidels. After the fall of Persia, Mesopotamia, and in
> 1064, Christian Armenia, and the Byzantine defeat at Mantzikert, the West no
> longer believed that the Byzantine Empire could defend itself. In 1076 the Turks
> entered Jerusalem, and by 1078 occupied most of Asia Minor, "with the result
> that their possessions were so intermingled with those of the Byzantines that they
> did in fact control the whole country." (Daniel-Rops 1963, 130)

Non-Muslims living in Muslim controlled areas were treated as second-class citizens, and while these "people of the Book" enjoyed some limited rights, they were viewed with suspicion and contempt (Garraty and Gay 1972, 382).

So, at a time when the Christian Church assumed a temporal as well as spiritual role in medieval society, the concept of a holy war was readily accepted. The "holy war" tradition took on a life of its own in Christianity and Islam. The concept of *jihad* or "holy war" in Islam will be discussed later in this chapter.

Saint Thomas Aquinas

As a young man, Thomas of Aquinas (1225-1274) joined the Order of Preachers or Dominicans. Within a relatively short period of time, Thomas established himself as one of Europe's leading intellectuals. As a faculty member of the University of Paris, he taught with renowned scholars like Saint Bonaventure of the Franciscan Order. Building on the philosophy of Aristotle and the patristic teachings of the Church, Aquinas set out to answer some of life's most perplexing questions. His monumental work, *The Summa Theologica*, is an encyclopedic synthesis of Aristotelian philosophy and Christian theology. As Cahill notes: "To Aquinas is owed the development for Catholic ethics of many ... central concepts of Catholic social teaching like reason, justice, common good, the dignity of the person, and the interdependence of all persons in community" (2002, 78). For our purposes it is important to note that Aquinas devotes considerable time and effort to developing the just war theory.

Aquinas covers the concept of just war in book two of the *Summa* (II-II 40) where his presentation on the use of force is found in his section on charity. He states that any decision to wage war must be focused on justice and the common good. Does this view stand in contrast to Saint Augustine's emphasis on just war as a response of Christian charity and love? Cahill explains: "Whereas Augustine sees an inward disposition of love as the motive behind the act of killing itself, Aquinas separates the two, preferring to justify killing on the basis of justice and the common good, not love of the one killed" (2001, 78-79). As Cole notes, for Aquinas, war...

> ...can be a means to [create] a just peace as well as a means to destroy an unjust peace. We keep a just peace and fight just wars because these are acts of charity. Just soldiering, in other words, is something Christians ought to do out of love for God and neighbor, and thus it is the most 'human' thing we can do in certain circumstances. (2001, 29)

Building on the medieval Church's Peace of God and Truce of God, Aquinas reinforces the concept of the noncombatant status of clerics. He highlights their role as spiritual leaders and sacramental providers as reasons why they should refrain from combat; his argumentation follows the teaching of Ambrose and other Church Fathers. He describes the clergy as individuals who are called by God to follow the "counsels of perfection," or evangelical counsels (Virginity: Matthew 19: 11-12; Poverty: Mark 10: 17-22; and Obedience: Mark 9: 34). As ordained for a higher calling, clerics must avoid being identified with warlike activity. As one commentator explains:

> Warlike pursuits keep clergy from their proper duties. In other words, their participation is unlawful, not because war is evil, but because warlike pursuits prevent them from doing their jobs. Second, it is 'unbecoming' for those who give the Eucharist to shed blood, even if they do so without sin (i.e., in a just war). (Cole 2001, 30)

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Aquinas offers readers a scholastic understanding of criteria for the declaring of just war. He builds his theory on the contributions of Augustine. First, he states that only the state or a legitimate ruler of the state possesses *just authority* to wage war. Like Augustine, he points to the New Testament to justify such authority. Romans 13:4 states that the appointed bearer of the sword, who holds the authority of the state, is God's minister. As such, he is to be respected and followed. Second, for war to be just, there must be a *just cause*, such as violation of law by use of force:

> The same power which it [the state] exercises over its subjects, extends to foreigners who disturb the peace of the state. Traditionally, the foundation of the *jus ad bellum* is a matter of distributive or vindicative justice. There can be no right to war until there is an *injurium acceptum* [injury inflicted].... The party that is attacked must be guilty of some fault against the state that initiates the war. (Fox 1963, 44)

Third, Aquinas holds that a *just intention* must be present for just war to be declared. The state that initiates war must do so with justice in mind, that is, it must wage war with the goal of re-establishing justice and creating a lasting peace.

While Aquinas outlines the requirements for the declaration of a just war, he offers little guidance regarding just behavior during war. He seems to leave defining just behavior during war to the warriors themselves. He was obviously hoping that their Christian character would guide them on and off the battlefield:

> Nevertheless, we can extrapolate a handful of guidelines from his writings. For one thing, we can presume that we should fight with the right intention, that is, we must intend to punish not just anyone, but only evildoers. Likewise, we should do our best to see that our use of force does not detract from our duty to uphold the good. Of course, the ability to target only those who deserve to be punished, no less than the capacity to formulate plans of action that will ensure more good than evil, must be cultivated. ... For Aquinas, right conduct in war is dependent upon the virtues of soldiers and the commanders who lead them. (Cole 2001, 31)

In sum, Thomas Aquinas believes that wars can be waged justly, and he instructs Christian soldiers to participate in and support just wars. He does so because he believes that just wars reflect Christian love and concern. For Aquinas, waging just war is an obligation for men of good faith, good will, and character to meet the responsibilities of the society and of the Church. As Cole explains:

> The most noteworthy aspect of the moral approach to warfare in Aquinas ... is that it teaches--contrary to today's prevailing views--that a failure to engage in a just war is a failure of virtue, a failure to act well. An odd corollary of this conclusion is that it is a greater evil for Christians to fail to wage a just war than it is for unbelievers. ...The Christian who fails to use force to aid his neighbor when prudence dictates that force is the best way to render aid is an uncharitable Christian. Hence, Christians who willingly and knowingly refuse to engage in a just war do a vicious thing: they fail to show love toward their neighbor as well as toward God. (Ibid., 31)

Thomas Aquinas' major contribution to the theory of just war is his systematic approach and presentation of the principles that he offers in his *Summa Theologica*. He argues against the extremes of pacifism and militarism or bellicism, preferring instead an organized approach to a middle ground or realist understanding of just war principles. While advising against the use of clerics in war, Aquinas also writes on the morality of ambushes in war; here he deals with the concept of fairness. In his treatment of just war, Aquinas emphasizes that men of faith, following the dictates of justice and charity, must support just wars. He quotes this passage of Scripture: "Rescue the poor and deliver the needy out of the hand of the sinner" (Psalm 81: 4).

Francisco Vitoria

HISTORICAL SURVEY

While the foundations of right principals for going to war were outlined by the time of Thomas Aquinas' death, the theorists and jurists of the late Scholastic period (16th and 17th centuries) felt compelled to clarify, expand, and codify these foundations. Two of the most prominent intellectuals of this period were Francisco Vitoria (1492-1546) and Francisco Suarez (1548-1617).

Francisco Vitoria, a Dominican priest, held the prestigious Chair of Theology at the University of Salamanca in Spain. Besides his academic duties, Vitoria also assisted the Spanish Crown in writing legislation for the recently discovered territories of the New World. Although he was considered one of the most accomplished academics of his day, Vitoria did not leave much of a writing legacy behind at the time of his death. Fortunately, his *lecturas* (class lectures) and *relectiones* (special lectures in which he addressed contemporary world problems in a more public or open lecture format) have survived. Some of these lectures, which address the concepts of war, peace, and colonization, outline Vitoria's contributions to the theory of just war.

A few of his more important lectures entitled: *De Indis* (About the New World Lands [mistakenly thought to be part of India]) and *De Jure Belli Hispanorum in Barbaros* (On Just War Principles for Spaniards in the colonies) are often referred to as the foundation blocks for a modern understanding of international law. McKenna notes: "The two [lectures] taken together constitute the first treatise [on] the law of peace and war" (1967, 728). These talks addressed the right of Europeans, specifically Spaniards, to colonize its new colonies. They discuss in particular whether the Spanish held the right or responsibility to convert the indigenous populations to Christianity.

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Vitoria defended the rights of the natives of the "New Spain," especially their right to own property. As legal, moral, and ethical advisor to the crown, Friar Vitoria was very critical of the Spanish conquest of the "New World" and particularly its mistreatment and sometimes forced conversions of the indigenous peoples. As counselor to the royal court, he heard official reports of the destruction of the great Aztec and Inca Civilizations, with its great loss of native life. As a result, he publicly questioned the morality of what some viewed as triumphant conquests, viewing as immoral the behavior of Spanish *conquistadores* like Cortez and Pizarro. Vitoria knew that the Spanish Crown and its representatives in New Spain, the military commanders, used religion as a significant justification for their actions. Religion was used to justify forced conversions, the enslavement of the natives, and the eradication of indigenous cultures. Vitoria questioned whether religion should ever be used as an excuse for expansion and conquest. He thus became the first just war theorist to reject religion as a just cause to wage war:

> Examining King Philips's wars against the Indians, he [Vitoria] condemns their lack of just cause. War, he insists, is not justified for religious reasons (to convert the heathen) nor for economic causes (to gain their gold) nor for political reasons (to extend the empire). The Indians, however pagan, immoral and uncivilized, are human beings with rights equal to those of all other persons. The natural law protects them against violence and injustice. (Holmes 2001, 7)

For this enlightened Dominican, going to war was only justifiable to redress a wrong or to seek reparations, but never to advance religion. Although Vitoria rejected the idea of religion as a legitimate basis for war, "…it wasn't until the horrendous experience of the post-Reformation religious wars, and particularly The Thirty Years' War … that

Western culture basically said: "Never again" (Lampman 2001, 3). Vitoria presents the criteria for declaring war in a clear and concise way:

> War is licit as a last resort, ... when all other means of persuasion have failed. The cause that justifies war, whether defensive or offensive, is the violation of a right. An essential condition for the licitness of a war is that the evils resulting from it will not be greater than the good intended. Defensive war can be justly undertaken by any person; offensive war can be launched only by public authority. (Alluntis 1967, 257)

Some accuse Vitoria of backing off from the criterion that religion never be used as a just cause for war. Why? Friar Vitoria argued that interfering with or opposing the propagation of the faith or preaching of the Gospel might provide just cause for war. Despite his rejection of religion as a criterion for going to war, he left open the possibility of using religion in exactly that way. In doing so, his caveat seemed to provide justification for future Spanish conquests (Inis 1980, 88). Vitoria believed, "The natives were not to be converted by force nor killed because of a rejection of the Gospel, but they might be constrained if they denied the natural right of travel through their territories or if they refused to permit the preaching of the Gospel" (Bainton 1988, 166). Vitoria also suggested that it was sometimes justified for more-enlightened governments to take control from less-enlightened ones "... provided it was for the welfare ... of the former and not merely for the profits of the latter" (McKenna 1967, 728).

As was stated in a previous section, the great scholastic writer, Thomas Aquinas, offered three criteria for declaring war justly: (1) just authority; (2) just cause; and (3) just intention. Friar Vitoria and the later scholastics expanded Aquinas' list for declaring and fighting a just war. He added three more criteria to the list; (4) since war is inherently evil, the good to be achieved must outweigh the harm that will result from war (greater

good); (5) war must only be waged when all other means to resolve the crisis have been exhausted prior to the use of force (last resort); (6) those waging war must have a reasonable chance for victory (probable success). Vitoria also broadened the criterion of just authority to include the possible consultation of ordinary citizens. He offered the novel suggestion that sovereign rulers *consult* with their people before deciding to declare war:

> The other side of this question of authority is whether or not citizens ought to support a war declared by the established authority. In the sixteenth century Vitoria suggested that the prince ought to seek consultation and be certain that war is justified before turning to hostile action; and the citizen should trust the judgment of the government and support the war effort unless he is certain that the war is unjustified. (Davidson 2000, 3)

Francisco Vitoria lived in an era of historical transition in international politics, one that fed discussion and development of just war theory. As Cahill notes (2002, 79), Vitoria poses a difficult question that had no doubt troubled just war proponents for years: What if both parties in a conflict have just cause to declare war? This moral question raises the dilemma about which belligerent is morally justified in going to war. For Vitoria, invincible ignorance could excuse an objectively unjust war:

> Vitoria's answer distinguished between the objective justice of the natural order and the subjective innocence of a party to the conflict. [That] both parties would have an objectively just case could not occur, [he wrote] "for if the ... justice of each side be certain, it is unlawful to fight against it, either in offense or defense." (Miller 1964, 256)

Francisco Vitoria provides readers with a comprehensive just war theory that is easily recognizable today:

> ...[It] generally include[s] the two categories of the right to go to war (*jus ad bellum*) and right means in war (*jus in bello*). In the first category are the criteria

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of legitimate authority (expressed in a declaration of war), just cause, right intention, and the purpose of peace or the common good (along with a reasonable hope of success in attaining it through war). In [Vitoria's] second category are the criteria of discrimination or non-combatant immunity, and proportionality of harm done to good achieved as a limitation on the tactics of war. (Cahill 2001, 80)

As one of the first theorists to include proper behavior during war as part of his just war principles, Vitoria required that war be waged proportionately and with discrimination. Pangle and Ahrensdorf warn that some current scholars distort Vitoria's teaching by overemphasizing his behavior-during-war contributions; others, such as James Turner Johnson, give Vitoria the credit for making a unique contribution to noncombatant immunity (Johnson 1999, 37).

Vitoria's ideas on just peace are also important to an understanding of the evolution of just war theory: "Once victory is achieved," he writes, "the conquering nation should exercise its rights over the conquered with moderation and Christian charity" (Alluntis 1967, 257). Vitoria is given low grades for his views on proportionality, however, since he writes that all means necessary to achieve victory should be permitted in war.

Another contribution of Vitoria is his innovation regarding conscientious objection. Holmes notes: "Vitoria ... asks whether the soldier who doubts the justice of a cause should fight. Ordinarily, one should trust the lawful government to do what is lawful. But if justice is seriously in doubt, and if careful inquiry does not allay those doubts, then the soldier should refuse to fight. Selective conscientious objection is the corollary of a just war ethic" (Cahill 2001, 7-8). Vitoria's contribution on conscientious objection may well have been formulated after careful reflection on the military

campaigns and civil activity of the Spanish government in the New World, since these activities raised questions on the part of many called to serve in these wars of conquest.

Finally, Vitoria's most visionary contribution to just war theory was probably his suggestion that the world might be a safer, more peaceful place if the nations of the world united in some sort of international organization:

> Vitoria not only defined international law, but he also stated the relationship of states to one another. He visualized an international society constituting one integral political order. His contribution was twofold: (1) he applied the principles of Thomas Aquinas to the concept of the new national, sovereign, independent states; (2) he built a theory of international society on the basis of Thomistic social and political principles by preserving the thoroughly objective and theological character of society, ... authority, and law. It is too much to expect that Vitoria, a pioneer in the field of international relations, living at the beginning of the modern era, should have elaborated a complete and detailed doctrine of international society; yet he did give in principle an outline of a world organization based on the equality of states. (McKenna 1967, 728)

In treating the concept of internationalism for the first time, Vitoria opens the door to a discussion that continues to this very day. He also compares just intervention against a nation that commits injustices to apprehending and punishing a criminal: "Just as the state has the power to punish criminals among its citizens, so mankind has the power to punish a nation guilty of injustice" (Alluntis 1967, 257).

Scholars like Francisco Vitoria inspire generations of followers that advance human thought and articulate the very best ideas of humankind. They help move humanity forward and challenge its conventional understanding. His contributions to an understanding of proper behavior during war, and his call for the establishment of a universal order of justice and peace, pre-date by almost five centuries the 20th century's establishment of a League of Nations, a United Nations, and organizations like the World

Court. In short, the foundation of these important concepts and constructs were first formulated at the University of Salamanca half a millennia before President Wilson's Fourteen Points or the Charter of the United Nations.

Francisco Suarez

Spaniard Francisco Suarez (1548 – 1617) was a Jesuit theologian born just a few years after the death of Francisco Vitoria. In comparison to Francisco Vitoria and the relatively few writings left after his death, Suarez bequeathed a legacy of voluminous writings for future generations. Like Vitoria, Suarez wrote widely about theology and law. "After Aquinas, to whom he owed much, Suarez is generally recognized as the greatest of the Scholastics" (Mourant 1967, 31). Some historians of law, referring to Vitoria and Suarez as "the fathers of international law," credit both with great advancements in the field of just war theory. Their most important contribution to the theory may be that they gave just war an international applicability. This focus empowered others with the insights to codify just war principles and create mechanisms for its subsequent enforcement by a world community:

> ...International law claims Suarez as its founder along with ... Vitoria. This is based on Suarez's doctrine on the law of peoples and his grandiose idea of the natural community of nations. The human race, though naturally divided into different nations or states, maintains a certain quasi-political and moral unity; the signs of this are the precept of love for all and the mutual needs of all classes. Therefore, though perfectly independent, they do not cease being members of a certain community of nations. The mutual relations of these nations are governed by the [*jus*] *gentium* or law of peoples, developed by Suarez, as a law between natural law properly so-called and fully positive law. The law of peoples, intimately based on nature, is constituted by an aggregate of practices established more by tradition and custom than by exact treaties. Today it is called international law. (Dalmau 1967, 754)

Believing that war could be waged with just cause, Suarez accepted and built upon the criteria for just war that were provided by his predecessors (Mourant 1967, 32). He outlined three conditions for the declaration of a just war: first, it must be waged by a just authority; second, it must have just cause; and third, it is only waged as a last resort, that is, when all other means of re-establishing justice have been exhausted.

Francisco Suarez made his contributions to just war theory and international law at a time of historical transition, international turmoil, political and social transition:

> ...The medieval synthesis of religion and politics had suffered repeated and decisive blows from, among other things, the Protestant Reformation and the ensuing wars of religion. A new conception of state sovereignty... had begun to take root, and Suarez and Grotius worked to adapt the just war tradition to the nascent body of international law. Their efforts shifted the normative elements of the just war tradition to the legal arena. Since multiple sovereign states were likely to claim just cause in the same conflict, and the Papacy was no longer an effective arbiter of such competing claims, establishing limits on the conduct of war (*jus in bello*) became the most promising means to control it. (Owens 2000, 2)

One of Suarez's most important and seminal contributions to the just war theory is found in his scholarship on just behavior in war (*jus in bello*) and in his suggestion that moderation be shown by combatants in war. Further, advising that peace be established with moderation, he suggested that treaties be created with an eye to a long-standing peace with justice for all peoples; he thus provides readers with important insights for a further development of *jus post bellum* principles.

Huig de Groot (Hugo Grotius)

Huig de Groot (1583-1645), often referred to by his Latin name, Hugo Grotius, was born in Delft, Holland and lived during one of the bloodiest wars ever fought in the

name of religion, the Thirty-Years War (1618-1648). A child prodigy, De Groot was admitted to the bar and thus permitted to practice law at an unusually young age. Later in life, having been convicted of conspiracy against the state, he completed much of his writing in jail. His major works were *Mare Liberum* (The Freedom of the Seas) and *De Jure Belli ac Pacis* (On The Rights of War and Peace). As Beck writes:

> In his book *Mare Liberum* he challenged the claims of England, Spain, and Portugal to rule over portions of the ocean. He argued that the liberty of the sea is essential to the rights of nations to communicate with each other and that no nation can monopolize ocean highways because of the immensity of the sea and its lack of stability and fixed limits. (2002, 1)

De Groot's greatest contribution to just war theory is found in his best known work, *De Jure Belli ac Pacis*, published in 1625. In it, he defends state sovereignty, especially a nation's right to use force in self-defense. This treatise makes significant contributions to the theory of just war. In it, Grotius extends this theory, making it more attractive for a world intent on moving from the ecclesial controls and influences of the past to a more secular approach in a world entering the Age of Enlightenment (DeForrest 1997, 7). Grotius codified just war theory and included it in his scholarship on international law. He offered just war as a code that could be used by the community of nations to govern itself and assist in their political intercourse. Pangle and Ahrensdorf comment:

> ...We have repeatedly found Grotius's compendious *On the Law of War and Peace* to be illuminating in its continuation and elaboration of that august tradition [just war]. Still, we would submit that Grotius's Herculean attempt to codify comprehensively, for the first time, 'that body of law which is concerned with the mutual relations among states or rulers of states' partakes of the distinctively modern ambition to free mankind from dependence upon essentially strife-ridden, because supra-rational, divine law. (1999, 162)

While clearly a man of peace, not war, Grotius was enough of a realist to understand that force would remain a viable option for rulers in their conduct of international affairs. Like many theorists before him, Grotius was grieved by war, yet understood that wars are sometimes necessary. He covered the topic of war in all three books of *De Jure Belli ac Pacis*. Addressing the unjust causes of war in Chapter 22 of Book II, Grotius used the following criteria to judge whether a conflict met the standards for declaring it just: first, the danger(s) faced by a country must be immediate; second, force must be necessary in order to defend a country's interests adequately against the danger(s); and third, the use of force must be proportionate to the threat that is faced (DeForrest 1997, 8).

Grotius viewed just war theory as one component of the law of nations, an international code to be shared by all enlightened countries on earth. Thus, he suggests "...those laws are known through the universal medium of the natural law, a law which transcends nations and their own particular legal codes, a law which is binding on all human societies in their interactions with each other" (DeForrest 1997, 8). Grotius had a broad vision of law, one which encompassed a universal applicability that had never been realized before his time, except, perhaps in the Canon Law of the Catholic Church. As Beck notes:

> Grotius derived his principles [of just war] using human reason from the Law of Nature and the Law of Nations which are universally accepted. A civil right derives from the laws of a sovereign state, 'But the law of nations is a more extensive right, deriving its authority from the consent of all, or at least of many nations.'...He quotes Cicero: 'There are two ways of ending a dispute, discussion and force; the latter manner is simply that of brute beasts, the former is proper to human beings gifted with reason.' [He suggests, that] men are obliged to recur to violence only when reason fails. (2002, 2)

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Grotius believed that war and the threat of war would always be a part of the international discourse of nations. "Therefore, if war cannot be shown to be a law-governed and just activity," he noted, "it is hard to see how the society of nations could be a lawful and just society." Pangle and Ahrensdorf remark, "We are struck, however, by the great prominence of self-defence and self-concern, rather than concern for others or for society as such, in Grotius' initial account of the natural principles that make war morally justifiable" (Pangle and Ahrensdorf 1999, 169). Thus, Grotius regrets that, although war may be justifiable, it causes such horrors that it should be avoided whenever possible. This feeling of regret is understandable given the fact that Grotius lived in the era of the Thirty Years War, a war that ravaged the nations of Europe.

As a person of deep Christian faith, Grotius prayed for peace in his tumultuous post-reformational world, "Please Lord, convince our governments that they should follow Thy will. Take away from us war and conflict, let rebellion die, and in time even the broken parts of Christianity will heal again" (Lowensteyn 1985, 1). As a man of peace, he offers suggestions for avoiding war and diffusing the crises that often lead to war. His contributions to peace are significant:

> Grotius discusses three methods for settling a dispute peacefully. The first is conference and negotiation amongst two rivals or contestants. The second method is called compromise, [that is,] a settlement in which each side gives up some demands or makes concessions. The third is that of a single combat or choosing by lot. Grotius believed that it is sometimes better to renounce rights than to try to enforce them. ...Grotius discusses these methods of achieving peace to ultimately obtain some form of justice. He says, 'For justice brings peace of conscience, while injustice causes torment and anguish. Justice is approved, and injustice condemned, by the common agreement of good men.' (Pangle and Ahrensdorf 1999, 169)

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Grotius presents many of his proposals for just behavior during war in *De Jure Belli ac Pacis* where he addresses issues like: (1) the need to temper the right to kill one's enemies, or to kill only with a sense of moderation and humanity (Chapter 11); (2) he questions the right of a victor in war to lay waste an enemy's country and carry off its effects (Chapter 5); (3) he suggests that rights be extended to prisoners of war (Chapter 7); (4) he asks belligerent nations to respect those nations who elect to remain neutral in the conflict (Chapter 17); (5) he suggests that enemies maintain good faith between themselves even in the most difficult and heated moments of the war (Chapter 19). Finally, Grotius follows Francisco Vitoria's lead and stresses the need for noncombatant immunity.

Pangle and Ahrensdorf identify two aspects of Grotius's concept of just war that are most critical to the development of the theory:

> First is the unprecedented pains Grotius takes to separate what is commanded by revealed Christian law from what is dictated by the principles of the natural law of reason by itself.... In thus distilling the former, more sublime, sphere of international law, Grotius by no means intends to set it aside. He does not look forward to a purely secular international law. Nevertheless, he reckons with an international society in which for the foreseeable future theological differences will be so great and so touchy as to make it urgent to clarify what is demanded of men prior to (and in no way canceled by) their higher revealed duties, no matter how the latter are interpreted. (Pangle and Ahrensdorf 1999, 170-171)

Another novel development suggested in the writings of Grotius is the significance with which he credits the "volitional (or positive) law of nations." He believes that the numbers of wars between nations can be kept somewhat in check when the world community rediscovers "...the restraints on moralism found in the volitional international law of classical antiquity--that is, only on the basis of acceptance of the principles that each nation must refrain from policing other nations..." (Pangle and

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Ahrensdorf, 177). So, he insists that every nation should respect the sovereignty of other nations as each goes about its everyday commerce and communication. He stresses the need for nations to respect the territorial and political sovereignty of other nations and to refrain from interference in the affairs of another country even when an injustice has been identified:

> The implicit general principle exhibited here is that the common good or advantage consist[s] in the security or collective preservation of the 'great universal society of nations.' ... [T]he latter's peculiarly precarious character (in contradistinction to civil society under a sovereign) rightly permits a grant of immunity from human punishment for certain violations of 'the pure law of nature' (which, we recall, is limited to the principles of restorative justice, derived from what is necessary for human society to function). ...The consensus of nations has [therefore] established an international rule of law that allows any belligerent sovereign in formally declared hostilities to wage virtually 'indiscriminate' war, immune from a punishment for himself or any of his troops or agents. (Pangle and Ahrensdorf 1999, 172-173)

While Grotius is sometimes dismissed because he accepts and even justifies the practice of enslaving an enemy (including the innocents or noncombatants in war), he should be recognized for his other contributions. In limits placed on religious wars, "he attempt[ed] to find sources of law that do not depend on Christian doctrine. His main achievements in this area was to recognize two primary alternatives to divine law, which he referred to as the law of nature and law of nations" (Roosevelt 2002, 7). It was Grotius' fervent hope and prayer that nations be guided by his codification of law and that they respect the positive law which governs all of them. He hoped that this effort might result in a just and lasting peace which might spare future generations the horrors of war experienced by his own unfortunate generation.

The Modern War Conventions

HISTORICAL SURVEY

The leaders of the international system set out after World War I to create the necessary international structures and procedures to give effect to a revived and revised just war idea. First, the League of Nations and then its successor, the United Nations, were designed with that purpose, among others, in mind. ...With this came the development of secular replacements for the ecclesiastical accoutrements of the medieval just war doctrine. The League or United Nations serves as Church, the Secretary-General as Pope, and the doctrine of collective security as theological creed of the Twentieth-Century community of saints that is sometimes known as the multistate system. (Inis 1980, 92)

International law emerged in the 19th and 20th centuries, in part, to check the suffering and destruction caused by war. Its purpose was "... to bring a semblance of order into the practical problems faced by combatants and noncombatants during military conflicts" (Anderson and Gifford 1995, 1). The international law of war evolved from a code of law traditionally referred to as the law of armed conflict or the law of war. While there have been "laws of war" for millennia, Grotius was the first theorist to codify international law and offer this code to the community of nations. During the 19th and 20th centuries, nation-states have attempted to further develop the code of law as it pertains to war. Then, signatories to these codes, having agreed to uphold these laws and bring a new degree of civility to humanity's most inhumane activity, hoped to limit the frequency of war and to define the characteristics of just behavior in war. This they did by placing legal restraints on combatant behavior in war:

> ...The past [century] ... has also been the era in which international consensus coalesced into formal agreements limiting the resort to war, banning certain weapons and uses of otherwise accepted weapons, seeking to protect from the ravages of war whole classes of people not directly involved in the prosecution of war, and institut[ing] ... war crimes proceedings to punish persons guilty of egregious violations of these restraints. Indeed, the growth of formal efforts to restrain the incidence and destructiveness of war has directly paralleled the realization of war's increasingly devastating capabilities and the use of armed power during war to attack civilian noncombatants. (Johnson 1999, 5)

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The two branches of the law on war are commonly referred to as the *Law of the Hague* and the *Law of Geneva*. In general, the Law of the Hague outlines the responsibilities and rights of those nations who engage in warfare, especially in regards to right behavior principles, or the just conduct of combatants at war. As for the Law of Geneva, it emerged to protect noncombatants and the innocents of war who needed to be safeguarded during times of conflict. It also addressed the rights of combatants no longer engaged in the conflict itself, that is, the wounded and prisoners of war. According to the American Red Cross, these two branches of international humanitarian law should not be treated as separate entities "... because ... some rules of the Law of the Hague ... protect victims of conflicts, while ... some rules of the Law of Geneva ... limit the action that the belligerents can take during hostilities" (American Red Cross 1997, 1).

The foundations of these laws can be traced to the scriptures, theologies, and philosophies of the world's major cultures and civilizations, as well as to the writings of jurists, statesmen, and warriors. The first modern code of war was drafted and implemented during the American Civil War. This war between North and South ultimately caused more than half a million deaths. Despite the length and severity of the conflict, the number of military casualties inflicted, and the geographic expanses over which it was fought, most of the reported casualties came from the ranks of the combatants, not the civilians. Why? During the Civil War, both the North and the South honored, for the most part, the principle of discrimination. There were, of course some notable exceptions, such as Major General William Tecumseh Sherman's "March to the Sea." Fortunately for America, most noncombatants benefited from this strict warrior adherence to the code of warrior-civilian discrimination. This code of chivalry insulated

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and for the most part protected innocent civilians from the ravages of warfare. Most

historians credit this development to the Lieber Code of warfare issued by the United

States Army in April 1863. Most soldiers were familiar with the code since most officers

were trained together before the initiation of hostilities:

> Normally, civilians were not targeted for destruction by the armies of either the North or South. In the strategic encounters at Gettysburg and New Orleans, for example, there were accepted codes on avoiding civilian casualties. In particular, *The United States Army General Order No. 100, Instructions for the Government of Armies of the United States in the Field* (known as the Lieber Code), which constituted the first comprehensive codification of the rules and regulations concerning land warfare, expressly protected the civilian population. (Allen, Cherniack and Andreopoulos 1996, 748)

The Lieber Code is the first well-known attempt to codify and apply existing laws

and customs of war to combat scenarios. While this Lieber Code provided protection for

the innocents of this intra-state struggle, no such code existed between nations. The same

protection was not offered to the international community until the establishment of one

of the world's most renowned and successful watchdogs of the innocents and victims of

war: The International Committee of the Red Cross.

The Red Cross credits its creation to a Swiss businessman, Henry Dunant. After

the bloody battle of Solferino, Northern Italy, in 1859, more than forty thousand French,

Italians, and Austrians were left dead or wounded on the battlefield. Few were given the

medical care and attention that modern militaries have come to demand and expect.

Dunant was grieved by the large number of combatants left wounded or dying and

untended on the field of battle. He immediately organized a relief effort to assist these

unfortunates, recruiting the help of civilian bystanders and volunteers from the area.

These volunteers began ministering to the dead, wounded, and dying without regard to their nationality or political affiliation.

The effects of this 1859 battle were a life-changing experience for Henry Dunant. When he returned to Switzerland he recorded the horrors in a monumental work entitled *A Memory of Solferino*. Released in 1862, the book was so popular that it sparked among the Swiss citizenry a national movement; this movement resulted in the formation that became the International Committee of the Red Cross (ICRC). Today,

> The International Committee of the Red Cross is a private, independent organization, exclusively composed of Swiss nationals, and headquartered in Geneva. It continues in the Dunant and [Clara] Barton model of maintaining the strictest neutrality towards politics, religion, and ideology. (Allen, Cherniack and Andreopoulos 1996, 757)

Other nations now have their own versions of the original Geneva group.

In 1863-1864, the International Committee of the Red Cross proposed a new international code of armed conflict that was eventually accepted and signed into international law by the community of nations. Since that date, the code, now identified with the city that hosted the first signatories to this modern law of war, is called the first *Geneva Convention*. This Convention became international law when a number of countries agreed to uphold the guidance and regulations set forth in the convention. James Turner Johnson views the establishment of the International Committee of the Red Cross and the Geneva Conventions as critical advancements for just war theory:

> New emphasis was given to the *jus in bello* early in the modern period, particularly in the thought of Grotius; ...Both Grotius and his predecessor Vitoria stressed noncombatant immunity, as had the medieval code of chivalry; by contrast, the customary *jus in bello* of the limited wars of the eighteenth century put the priority on lowering the overall damage of a war, providing for noncombatant protection as implied by proportionality, not as an absolute right

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implied by the principle of discrimination. In international law the establishment
of noncombatant immunity as a right and noncombatant protection as a
responsibility of belligerents has come only with the development of the Geneva
Conventions and Protocols beginning in 1863 and with the growth of international
humanitarian law in the period since World War II. (Johnson 1999, 37)

In 1929 the Red Cross produced its second convention. This second Geneva
Convention addresses the rights, privileges, and protection of prisoners of war. In 1949
another convention entitled *The Geneva Conventions for the Protection of the Victims of
War* was created. Formulated as a direct result of the millions of civilians who became
casualties of World War II, this convention addresses a number of issues. They include
treatment of the wounded and sick on the field of combat or at sea; the treatment of
prisoners of war; and the discrimination in combat of civilians or military noncombatants
such as medical personnel and chaplains. In 1977, the Red Cross released additional
protocols expanding the rights outlined in the 1949 Convention. These protocols
addressed the needs of the victims of intrastate and interstate conflicts. For the first time
in the history of the conventions, the Geneva Accords addressed the needs of
noncombatants caught in the horrors of civil war, revolution, and insurrections.

The Geneva Conventions form part of international humanitarian law which
regulates what can be done and what cannot be done in time of war. As Kreisler notes:
"There are now four Geneva Conventions, one of them on prisoners of war, which is the
third one, one on shipwrecked people, one on war wounded, and possibly the most
important one, how civilians should be treated in case of war" (1999, 2).

With an attempt to limit the use of military technology in its Truce of God
legislation in the 11th century, the Catholic Church was the first organization to try to
regulate the type of weaponry that could be employed in warfare. It did this in its

instruction prohibiting the use of the crossbow. The next attempt to control or ban the use

of weaponry came in 1868 when diplomats met at the invitation of the Russian Czar and

agreed to ban the use of certain projectiles in combat. This treaty is called the

Declaration of Saint Petersburg. Over the course of the next centuries, there would be

numerous attempts to limit the use of both conventional weaponry, weapons of mass

destruction, and chemical/biological agents.

> Long a tenet of customary international law, the prohibition against employing
> weapons and methods of warfare so as to cause superfluous injury or unnecessary
> suffering has been codified at least since the St. Petersburg Declaration of 1868.
> At issue at that meeting of the International Military Commission in Saint
> Petersburg was the use of certain projectiles tipped with light explosive or
> incendiary charges. When used against human beings, the new projectile was no
> more effective in incapacitating the enemy than an ordinary bullet; however, it
> caused far greater wounds and thus greatly aggravated victims' suffering. The
> resulting declaration prohibiting the use of explosive projectiles under 400 grams
> was the first international treaty restricting ... conduct [in] war [*jus in bello*].
> (Kaszuba 1997, 4-5)

In 1899, *The Hague Conventions* outlawed the use of asphyxiating gases and

expanding bullets in war. When delegates gathered at the Hague in 1907, they signed

another treaty that codified the conduct of combatants in war. Since the original Hague

Conventions (1899), several attempts have aimed at limiting certain types of weaponry in

war, with codes written to guide the conduct of combatants in conflict.

In 1925, protocols were signed in Geneva prohibiting the use of gas and

bacteriological weapons. In 1972, a new convention outlawed the development,

production, and stockpiling of biological or toxic weapons; further, it directed their

destruction. Delegates to a convention in 1980 signed protocols that prohibited or

restricted using conventional weaponry that caused excessive injuries or undue suffering

from such indiscriminate effects as non-detectable fragments, mines and booby traps, and

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certain incendiary weapons (ICRC 1999, 1). Similarly, delegates to the 1995 Vienna

Diplomatic Conference introduced a protocol limiting the use of laser weapons, and in

1997 in Ottawa, Canada, 121 countries banned the use of anti-personnel mines. Because

of security arrangements with South Korea, the United States did not sign the protocol. In

1994, prompted by the destructive nature of some of Iraq's military actions towards the

environment in 1991, and sparked by United Nations General Assembly debate, the

International Committee of the Red Cross issued guidelines on the protection of the

environment in times of conflict. International environmental law is now covered in

another set of protocols and treaties.

Before the advent of 20th century warfare, civilians were generally regarded as

innocents to be sheltered from the ravages of war. Unfortunately, many now view

civilians as legitimate targets. Judging by the catastrophic numbers of civilians wounded

or killed in the Second World War (1939-1945) and considering the potential loss of

innocent life in any armed conflict today, conflict that might include weapons of mass

destruction, it is apparent that the principle of discrimination is not always a primary

concern for nations planning a war. In many of today's armed conflicts the death toll of

the innocents continues to rise:

> The traditional legal effort to protect civilians in war has long centered on
> distinguishing between civilian persons or objects and military targets. This
> approach was based on two key assumptions: that attacking civilian targets would
> provide little military advantage; and that, quite apart from their legal or moral
> obligations, parties to a conflict would thus seek to optimize their resources by
> targeting military assets. (Bruderlein and Leaning 1999, 432)

HISTORICAL SURVEY

On October 26, 1999 the United States House of Representatives commemorated the Fiftieth Anniversary of the Third Geneva Convention (1949) in its Resolution 102. The resolution reads in part:

> The Geneva Conventions are about saving and honoring the lives of men and women who risk their lives in service to their country, ... their families, and the innocent civilian victims of warfare.... These individual stories of people whose lives were risked in war, and of people who were taken prisoner in war, point to justification for the Geneva Conventions. ... War is between nations, not between individual men and women; and ... men and women who risk their lives in war should be honored and treated with respect and dignity by the combatant nations involved. ... For them, and for the men and women serving America's armed forces today, the Geneva Conventions are very real. They mean the difference between life and death. They define the difference between a civilized world and barbarism. (Cunningham 1999, 2)

International humanitarian laws, such as those agreed to in the last centuries, "... seek to save lives and alleviate suffering of combatants and noncombatants during armed conflict" (American Red Cross 1997, 1). These laws and conventions codify the concepts of just behavior in war (*jus in bello*) and increase the odds that combatant states will follow the letter, if not the spirit, of the law. The members of the international community have, for the most part, become signatories to an international code of humanitarian law that somewhat 'humanizes' the warfare of the future. International tribunals and the World Court now have the international authority to enforce this modern code of law and hold violators accountable for their actions. Given the relatively brief period of time that nation states have voiced agreement on these laws and agreements, it is hoped that these legal advancements might further the work of international justice and peace, averting in the process future conflict and war, or at least limiting the destructive nature of war. One organization created to do just that is the United Nations.

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HISTORICAL SURVEY

The United Nations

Scholars like Francisco Vitoria, Hugo Grotius, and Francisco Suarez envisioned an international organization to diffuse interstate crises and constructively address the problems that lead to war. A few seminal thinkers dreamed of a trans-national organization that would have the authority and power to address issues before they evolved into war. At the end of the 19th century, delegates to the Hague Convention (1899) discussed how an international organization could be created to achieve those objectives. As a result of their deliberations, certain countries became signatories to a Convention for the Pacific [or Peaceful] Settlement of International Disputes. As part of the vision, the convention directed the establishment of a permanent Court of Arbitration. These same farsighted delegates to the Hague Peace Conference also codified the rules of war in an agreement known as the first Hague Convention.

The Treaty of Versailles, which formally ended the hostilities of World War I, established the League of Nations to promote cooperation and peace among nation-states. This step was accomplished as a direct result of the vision and diplomacy of U.S. President Woodrow Wilson. These delegates envisioned a world of justice, peace, and security for all. Unfortunately, their lofty ideas were never realized and the League disbanded. While its famous failure and the Second World War are forever inevitably linked, it is important to note that the League of Nations did set the mold and establish the precedent for a world body of nations and it continued the Court of Arbitration, first established by the Hague Convention. The disbanding of the League of Nations left a vacuum in international relations that would not be filled until after World War II.

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HISTORICAL SURVEY

The term United Nations was first used in 1942 by President Franklin Roosevelt who described the resolve of the twenty-six allied nations to continue their fight against Germany, Japan, and the other Axis nations. The Dumbarton Oaks conversations were held at Dumbarton Oaks, Washington, D.C. The first meeting, which lasted from August 21st to September 28th, 1944, included representatives from the Union of Soviet Socialist Republics, the United Kingdom, and the United States. The second meeting or conversation, held September 29th to October 7th, 1944, included representatives of the United Kingdom, China, and the United States. These nations agreed to the purposes, principles, and design of an international organization that eventually became the United Nations. After World War II, representatives from fifty countries met in San Francisco to draft the *Charter of the United Nations*. On October 24, 1945, France, the United States, the United Kingdom, China, the Union of Soviet Socialist Republics, and a majority of the other countries attending the conference ratified the United Nations Charter and the United Nations (UN) officially came into existence. Today, roughly 189 countries of the world claim membership in the United Nations.

Although the United Nations is not a world government, it does have authority in a moral sense, and its charter gives the UN certain authority to (a) reaffirm fundamental human rights; (b) establish conditions under which international laws and treaties may be maintained; (c) encourage that nations practice tolerance and live together in peace as neighbors; (d) unite the strength of nations to maintain international peace and security, (e) work diplomatically to ensure that armed force not be used unless it is in the common interest and only as a last resort; (f) work for the promotion of economic and social

advancement of all peoples; and finally, (g) undertake the progressive codification and development of international law (United Nations 2002, 1).

Since 1945 the United Nations has been responsible for maintaining international peace and security. As such, it has been given the authority to work with the community of nations to suppress acts of international aggression and other violations of the peace. It has used international law to settle disputes among nations and to diffuse international disputes in a non-hostile way. It has been asked to build venues for international cooperation and understanding while promoting human rights and fundamental freedoms for every person on earth.

Article 51 of the *Charter of the United Nations* reflects centuries of philosophical reflection, debate, and codification in what is called the just war theory. The article states:

> Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. (United Nations 2002, 3)

Despite two horrific world wars with millions upon millions of casualties, many of which were noncombatants, the delegates to the United Nations elected to maintain the right of sovereign countries to defend themselves against aggression. Richard Regan maintains: "…Nations' individual and collective right of self-defense ceases when the Security Council has taken effective measures to maintain or restore peace, that is, measures that actually induce the aggressor to abandon its military operations and military gains, and to agree to settle the dispute by peaceful means" (Regan 1996, 27).

The United Nations helps coordinate the activity and efforts of its member states to work together for the universal benefit of all. The authority of the UN, which is limited

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by the sovereignty that each member enjoys, is also restricted by the treaties and international laws that guide members' global and individual agendas. Under the UN Charter, all states, which are equal under international law, must respect the equality of others. All states enjoy full sovereignty over their own affairs and owe respect to the sovereignty of others. Finally, all states have the responsibility to honor international obligations and respect the responsibility of others.

Thus, despite Cold War politics and periodic failure to stop aggression or bloodshed, the UN has evolved into a powerful symbol of international order and cooperation. Through its organizations, committees, and sub-committees, the UN provides the world with: (1) a forum for discussion, debate, and potential resolution of issues having international magnitude and interest; (2) a mechanism for conflict resolution and the potential mediation of hostilities; (3) an international monitoring organization for individuals, groups, or even nations that might be persecuted, oppressed, or unrepresented in an international forum; (4) a catalyst for economic, social, and/or cultural development.

Resistance to the authority of the United Nations is evident in many nations, including our own. In 2002-2003, President George Bush asserted that, if the United Nations did not favorably respond to Iraq's threats to its neighbors, it ran the risk of irrelevance in the modern world. Whether these threats are real or potential, Grace Roosevelt, a relative of former First Lady Eleanor Roosevelt, who helped frame the United Nations Charter, states its utility to the community of nations in a much more positive light: "With the establishment of the United Nations and international legal institutions such as the International Court of Justice and the International Tribunal for

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Crimes Against Humanity, we finally have in place institutions that past visionaries could only hope would eventually evolve" (Roosevelt 2002, 9).

CHAPTER THREE:

CONTEMPORARY AUTHORS

The dogmas of the past are inadequate to the stormy present. The occasion is piled high with difficulty, and we must rise to the occasion.
                    ---Abraham Lincoln, Second annual message to Congress, Dec 1, 1862

Introduction

Given the historical survey presented in Chapter Two, it is time to move to a

consideration of the contemporary trends and concepts dictating modern just war debate.

Using both primary and secondary sources, the author will here highlight a few of the

major lines of debate that are at the forefront of just war discussion. This goal will be

accomplished by presenting some of the principal contributors to the contemporary

understanding of just war theory.

The contributions of the following individuals and groups will be presented in this

chapter: (1) J. Bryan Hehir; (2) James Turner Johnson; (3) Richard J. Regan; (4) Michael

Walzer; (5) William V. O'Brien; (6) Paul Ramsey; (7) Drew Christiansen; (8) the

twentieth century popes; (9) the Second Vatican Council; and (10) the American Catholic

bishops.

J. Bryan Hehir

J. Bryan Hehir, Ph.D., is a highly respected Roman Catholic ethicist. He is also a

leading expert in just war theory. Hehir first gained national renown as one of the drafters

of the American Catholic bishops' pastoral statement, *The Challenge of Peace: God's*

Promise and our Response. At that time, Hehir was a consultant in the Office of Social

Development and World Peace at the United States Catholic Conference (Washington

D.C.). He has also held prestigious Chairs of Ethics at both Georgetown and Harvard

Universities. Finally, he holds the honor of being the first Roman Catholic to be

appointed Dean of the Harvard Divinity School.

Hehir believes that just war theory must begin with a presumption against the use

of force.

> Essentially, the ethic of war starts with the presumption *against* the use of force.
> To look at war as a moral reality we start with the presumption that war is a bad
> way to handle human affairs. That does not say that war is never possible in moral
> terms but it says to go to war one must meet a series of tests, a series of hurdles, if
> you will, to justify this blunt and bloody instrument of human intercourse. (1991,
> 2)

He holds that the only way to justify ethically the use of force is through an override of

this presumption, namely, "by reversing ... the basic insight that war is a bad way to deal

with human affairs" (1991, 3). Ordinarily, just war theorists follow the standard *jus ad*

bellum, jus in bello categories for the justification of war and the use of force. In one

article, however, Hehir suggests examining the ethical justification of war through a

series of standards grouped under three main questions: (1) *Why* does one have the right

to use force and for what purpose(s)? (2) *When* is force justified, that is, under what

conditions? and (3) Even when force is justified, *how* should it be used (1991, 4)?

To answer the question *why* a nation needs to use force, he examines the *jus ad*

bellum criteria for going to war. He asks in effect: "Will force be used to protect human

life, to defend basic human rights, or to prevent a ruthless hegemony or aggression?" If

so, the criteria for just cause will have been followed.

In answering the question *when*, Hehir believes that inquiry should begin with a

discussion of a "just cause." Even if a just cause exists, the question must still be

answered whether all other potential means of resolution have been attempted. Have all

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avenues of diplomacy failed? Has enough economic and political pressure been exerted, and, if so, has it had enough time to succeed? Are there other ways to neutralize the threat or remediate the evil short of the use of force? Since war is, according to Hehir, "a blunt and unpredictable instrument," he offers, for our reflection, the comments of a military leader to his commander-in-chief: 'Mr. President, I can guarantee that the outcome of the use of force will be our victory over the enemy, but I cannot calculate the cost of the war in terms of property and life.' The "when question" also addresses the criterion of proportionality: Will more good than harm be accomplished in the process of applying force to ensure the just cause (Hehir 1991, 5)?

Finally, Hehir asks a question that directly relates to just behavior in war: *How will force be used by the combatants responsible for the prosecution of the war?* Will the warriors ordered to fight conduct themselves justly? He believes that any morally legitimate use of force must be limited and adhere to the traditional criteria of *jus in bello*: proportionality and discrimination. Here Hehir addresses the *means* of using force:

> During World War II noncombatant immunity was violated by everybody on all sides, with the allies being as vulnerable to the critique as were the Axis powers. What was notable was that nobody said anything about it. As MacGeorge Bundy argued in his book on the nuclear question, by the time of the bombing of Hiroshima there was no great debate in higher policy circles about striking civilians for that bridge had been crossed much earlier. (1998, 168)

Besides offering this novel *three question approach* to just war theory, Hehir poses another critical question: When are more aggressive models of military intervention justified? In an article entitled, "Military Intervention and National Sovereignty: Recasting the Relationship," Hehir examines the growing United Nations and United States trend to intervene militarily in the sovereign affairs of other countries.

He asks whether it is ever just to conduct offensive military operations that violate the rules of sovereignty.

Hehir believes that the collapse of the bipolar world (the Soviet Block vs. the West) represents a watershed event in international relations. After the collapse of the Soviet Union, the rules and paradigms of Cold War diplomacy disappeared. For example, according to one scholar, "Hehir refers to the shift in the way we view nuclear weapons -- and how they have moved from a primary to a secondary consideration.... 'Nukes' shifted our attention from the ethics of war to the ethics of peace" (Thompson 2001, 84). At the University of Chicago's Divinity School symposium, *The Sacred and the Profane* (October 20, 2000), Hehir clarified his position; as a colleague notes:

> [Hehir] argued that "doing ethics in just war tradition today is to define oneself in a situation ... similar to another transitional era--the period of time between the fifteenth and seventeenth centuries, where the actors were Vitoria, Suarez, and Grotius." In both periods the political landscape was shifting at precisely the same time as the religious landscape, and, as a result, the existing norms regarding the use of force were weakened considerably. In our time, the political shift has come in the form of international organizations that have increasing power to regulate activity within sovereign states. (Owen 2001, 4)

Based on two normative traditions (the moral and the legal) about intervening in the affairs of another nation-state, Hehir illustrates the innate tensions that exist between the two. It is sometimes necessary, he holds, to violate an international law, such as respect for a nation's sovereignty, to address issues of justice:

> Hehir distinguishes [these two traditions] by their conception of political community, their understanding of the use of force, and their conclusions about military intervention. The *moral* tradition stressed the bonds within the political community, the use of force as an instrument of justice, and the *obligation* of intervention as a duty of solidarity to those endangered or under attack. The *legal* tradition stressed the autonomy of states, the right to use force as an attribute of sovereignty, and the necessity of nonintervention as a principle of order in international relations. (Thompson 2001, 84)

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Hehir explains that the legal tradition (international law and practice), which upholds the sanctity of nation-state sovereignty, follows the norm of noninterventionist behavior. On the other hand, he holds that issues of justice can take precedence over national sovereignty, especially if a nation has disregarded or thwarted efforts on the part of other nations to remedy the injustice.

Therefore, Hehir suggests, it may be time to move beyond long established legal parameters so as to focus international debate on what is moral and right. This shift expands the parameters of past and current understanding of the theory of just war, for it moves just cause from a defensive to an offensive posture. *The principle is simply that, while lawyers can inform us about what is legal, they are less qualified to advise us as to what is right.* The moral tradition, which addresses this dimension of statecraft, takes precedence here. In sum, Hehir challenges us to consider whether the principle of justice might ever justify the military intervention of some nation-states into the internal affairs of others.

According to Thompson, "Hehir clings to the principle of nonintervention ..." (2001, 87). Nevertheless, he questions nonintervention from the perspective of the moral tradition. For Hehir, "The presumption against the use of force in just war theory demands specific exemptions based on stringent moral criteria, particularly if force is to be used to intervene in a conflict within a sovereign nation" (Ibid.). Given the examples of "ethnic cleansing" in Bosnia and the horrendous genocide in Rwanda, his reframing of the question regarding offensive military intervention for the sake of justice is both timely and appropriate. So, Hehir comes across as exceptionally strong on overriding the

presumption against intervention in the case of genocide and other crimes against humanity:

> Genocide triggers the right to intervention. I would argue that in the face of "ethnic cleansing" and in the face of other situations where the chance of escalation to global war is significantly minimized, there may be a higher obligation to intervene; therefore, I would expand beyond genocide to include other causes. (Hehir 1998, 169)

James Turner Johnson

James Turner Johnson is a professor of religion and an associate member of the graduate department of political science at Rutgers University. He is the recipient of numerous academic awards, including prestigious fellowships from the Rockefeller and Guggenheim Foundations, as well as from the National Endowment for the Humanities. Johnson is also a member of the editorial board of *The Journal of Religious Ethics*.

This prolific writer is one of the world's most prominent scholars on the theory of Just War. Some of his important works include: *Ideology, Reason, and the Limitation of War: Secular and Religious Concepts, 1200-1740* (1975); *Just War Tradition and the Restraint of War: A* Moral *and Historical Inquiry* (1981); *Can Modern War be Just?* (1984); *The Quest for Peace: Three Moral Traditions in Western Cultural History* (1987); *Just War Tradition and the Restraint of War* (1987); co-editor of *Just War and the Gulf War* (1992); *Cross, Crescent and Sword: The Justification and Limitation of War in Western and Islamic Tradition* (1990); *Just War and Jihad: Historical and Theoretical Perspectives on War and Peace in the Western and Islamic Traditions* (1991); *The Holy War Idea in Western and Islamic Traditions* (1997); and *Morality and Contemporary Warfare* (1999).

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In his first major work, *Ideology, Reason, and the Limitation of War: Secular and Religious Concepts, 1200-1740*, Johnson sets the stage for a theme that emerges throughout his writings: the interaction of religion and state. Readers begin to see the creation of an approach that he follows in many of his writings. In doing so, Johnson provides readers with the philosophical, theological, and legal foundations of the just war theory that underlie many of his books.

Johnson continues his exploration of the historical foundations of the theory of just war in his book: *Just War Tradition and the Restraint of War* (1981). He traces the development of just war theory from Augustine to the beginnings of the modern era. This volume is written in three parts. Part one explores his theoretical and methodological contexts of just war, while the second and third sections of the book, "explore the relevance of the history of war and of attempts to restrain war for contemporary analyses" (Paret 1982, 1362).

In his 1984 work *Can Modern War be Just?*, Johnson takes exception to some of the concepts and positions posed by the National Council of Catholic Bishops in their controversial Pastoral Letter: *The Challenge of Peace: God's Promise and Our Response* (1983). The letter sparked a national debate over America's nuclear deterrence policy. The bishops, who question the United States' *first use* policy on the use of nuclear weapons, justified their position by stating that just war theory always begins with a presumption against war. For the bishops, just war is only waged as a last resort, and therefore, any *first use* of nuclear weapons violates the guidelines of just war theory. Johnson responds to the bishops' pastoral letter in *Can Modern War be Just?*

In disagreeing that war must only be waged as a last resort, Johnson labels this a *crypto-pacifistic* position or a form of *just war pacifism*. Johnson does not lay the entire blame for this expression of "crypto-pacifism" at the feet of the American bishops. He blames the development of modern Christian pacifism on some of the popular figures of twentieth century Catholicism, such as Dorothy Day and Thomas Merton, whom he mentions by name.

Johnson holds that the presumption against the use of force, where war is waged as a last resort, seriously distorts just war thinking. He points to several criteria of *jus ad bellum* or "going to war" precepts that should ultimately guide leaders who must declare war. He claims that three criteria (just cause, right intention, and competent authority) outweigh the other criteria and therefore enjoy priority over them (Saint Augustine's three criteria). This view relegates proportionality, reasonable hope of success, and last resort to secondary status in his *jus ad bellum* calculus. He states that, by inverting the priority in their pastoral statement, the American bishops failed to make a valid case.

Keith Pavlischek, a Marine colonel and writer on just war theory, agrees with Johnson's assessment of the bishops pastoral and with the crypto-pacifism label that Johnson uses in his references. Pavlischek reminds readers that warriors, much in line with the thought and ideology of Johnson, would prefer a *presumption against injustice* to one against the use of force. Given Hehir's arguments for just interventionism in the post-Cold War world, Johnson makes a valid point, one worthy of further discussion and debate. Nevertheless, the discussion would probably have taken a different twist had it included an in-depth look at the potential first use of nuclear weapons, which the bishops were addressing.

Johnson's *Quest for Peace* (1987) is a historical survey of the discussion of war

and peace throughout history. He surveys the just war tradition, Christian sectarianism,

the evolution of pacifism, the birth of humanist utopianism, and finally, internationalism.

Not surprisingly, Johnson takes exception to the commonly held position that in the first

few centuries of its existence the Christian Church was a pacifist church. He suggests that

by the early second century, the institutional church reflected both the schools of pacifism

and realism or militarism as these church members debated both the role of the church in

the affairs of state and the role of the Christian in the world.

Johnson believes that Christians in the early church accepted active roles in the

affairs of state and proudly served in the military years before the Constantinian Era. In

specific, he mentions the *legio fulminata*, the twelfth legion, in which a significant

number of Christians served. Johnson goes so far as to suggest that changes in society at

large made military service an attractive vocational option to Christians seeking to climb

the social ladder. Johnson's historical assessment has met with some opposition. For

instance, Berenice A. Carroll, who views the pacifism of the early church as substantial,

disagrees as follows:

> The book is sadly marred by Johnson's two-fold hidden agenda: first to defend
> the Roman Catholic Church of the late classical and medieval era against charges
> of having betrayed the early Christian commitment to pacifism; second, to
> legitimize Just War Theory as one of the three major forms this quest (for peace)
> has taken in Western Culture. (Carroll 1992, 89)

Johnson is also criticized for defining pacifism in a specifically Western fashion.

Perhaps the criticism leveled at Johnson by critics of the *Quest for Peace* led him to

conduct scholarship concerning just war traditions in non-Western traditions. His next

volume, *Cross, Crescent and Sword: The Justification and Limitation of War in Western*

and Islamic Tradition (1990), which he co-edited with John Kelsay, offers insights into Islamic just war thought. In one article, Abdulaziz A. Sachedina defines the true meaning of Islamic *jihad*. As was presented in Chapter Two of this dissertation, Sachedina explains that *jihad* means first, internal striving, and the meaning of *jihad* as war is only one of many connotations for this word. To see *jihad* exclusively or primarily as "holy war" is too narrow, Sachedina states, for the rich context of its meanings.

Another contributing author, Charles Butterworth, presents a philosophy for the justification of just war as presented in the writings of an Islamic sage by the name of Abu Nasr al Farabi. Al Farabi suggests that war is justified when it spreads the boundaries of Islamic influence. As this view is troubling to Western scholars, John Kelsay explores the category of *jus in bello* in the Islamic just war tradition. He concludes that Islam gives much less guidance than does the Western theory of just war. He speaks specifically about discrimination and proportionality as regards who or what may be justly targeted. In Kelsay's opinion, this view leaves civilians and prisoners of war more vulnerable in the Islamic tradition (Kelsay 2000, 225).

Johnson continues his exploration of the cultural traditions of the Christian and Islamic worlds in *The Holy War Idea in Western and Islamic Traditions*. He continues his earlier effort to promote constructive dialogue between the two traditions, especially in respect to warfare. In light of the events of September 11, 2001, his efforts take on a much greater significance. Contemporary Western society tends to view the concept of holy war as a relic of the past, viewing crusades and religiously inspired conflicts with scorn and suspicion. By comparison, Islamic tradition still holds to a concept of holy war as long as it meets the guidelines outlined in the *Qu'ran*, namely, "Fight in the cause of

God those who fight you, but do not transgress limits; for God does not love transgressors" (Qu'ran 2: 190); and, "God does not forbid you, with regard to those who do not fight you for [your] faith nor drive you out of your home, from dealing kindly and justly with them; for God loves those who are just" (60: 8).

In his latest book, *Morality and Contemporary Warfare* (1999), Johnson offers readers a contemporary look at just war theory. He begins in much the same way as in his other books by offering readers an overview of just war theory. He then discusses international politics, outlining some just war strategies for these challenging times. He points to recent intrastate (that is, civil, ethnic, or tribal) conflict, as distinct from interstate warfare, as an example of contemporary challenges to the traditional understanding of just war theory. According to Hehir, "A principal theme of the book is that building a consensus on the purposes and limits of war is necessary because contemporary warfare presents problems quite different from the kinds of conflict that moralists have addressed for the past fifty years" (Hehir 2000, 32). For his part, Johnson writes:

> Contemporary warfare has [generally] in fact taken the form of local conflicts, ... not civil wars, in which no great alliances of nations are involved; these have been wars fought for reasons based in local rivalries, typically inflamed by historical animosities, ethnic disparity, or religious difference, rather than for reasons of global *realpolitik*; they have been fought not with nuclear weapons (or, indeed, other types of weapons of mass-destructive capability) or the latest in military technology, but instead with conventional weaponry, often of old design, and often limited to the rifles, knives, grenades, and light ... weapons which individual soldiers can carry on their person. (Johnson 1999, 3)

Johnson, who is concerned about this trend in warfare, sees this recent development as a departure from the Cold War perspective on just war and its unique preoccupation with weapons of mass destruction (WMD). He sees a need to shift the just war emphasis from

its prior focus on deterrence of WMD to the new realities of low intensity ethnic, tribal, and religious warfare.

Johnson also addresses a shift in the international climate. With the major exception of two U.S.-led wars against Iraq, traditional interstate warfare has taken second place, following the collapse of the Soviet Union to the new reality of intrastate warfare. Examples of this new reality were the Bosnian, Rwandan, East Timor, Haitian, Palestinian, and Somalian conflicts of the 1990s. In focusing on more limited wars, Johnson emphasized the issue of international intervention in intrastate conflicts. He feels that intervention in humanitarian crises such as those witnessed in Bosnia and Rwanda call for decision-making outside the traditional paradigms set by international law and certain just war theorists.

Johnson's *Morality and Contemporary Warfare* restates his longstanding criticism of the American Roman Catholic Bishops' 1983 Pastoral Letter, *The Challenge of Peace: God's Promise and Our Response*. He again argues that just war theory (JWT) should not be built on a criterion or presumption against war, an argument he first stated in his book: *Can Modern War Be Just?* (Johnson 1984, 43). Again, he credits modern pacifism for the popularization of presumption against war and its subsequent adoption by church leaders. Johnson believes that just war theory should begin with a presumption against *injustice*, not war. In doing so, he opens the door to aggressive intervention in another nation's sovereignty when issues of justice dictate such intervention. He also gives credit to the Catholic bishops for adopting a more favorable view of intervention in their 1993 Pastoral Letter, *The Harvest of Justice is Sown in Peace*.

Johnson states that the theory of just war is not some morally abstract theory divorced from real world politics; to the contrary, it is a theory in dialogue with international politics and the dynamics of statecraft. A classic understanding of just war dictates that force be used for defense against unlawful attack, reclaiming something wrongfully taken, or for the punishment of some evil (Pavlischek 2000, 44). While highlighting the critical role played by nation-states in international politics, Johnson focuses on what he perceives to be some weaknesses of the United Nations. He would like the United Nations to focus more on the presumption against injustice than on a presumption against the use of force. He claims that this shiftwould extend the contemporary dialogue, thus broadening traditional just war theory enough to address contemporary needs. In the current geopolitical climate, he believes, it makes more sense to approach interventionism through the criterion of a presumption against injustice rather than through a presumption against war or the use of force.

Finally, Johnson defends the need for strict observance of noncombatant immunity while dismissing the popular claims of some theorists that modern weaponry, especially weapons of mass destruction, negate the concepts of proportionality and discrimination. Without strict noncombatant immunity, these powerful military weapons render meaningless the distinction between combatants and noncombatants. He takes up this issue again in "Maintaining the Protection of Non-Combatants," an article written for *The Journal of Peace Research* (July 2000). There he advocates always distinguishing between combatants and noncombatants, as well as intentional versus collateral damage to noncombatants, even in light of nuclear weapons.

Richard J. Regan

Richard J. Regan is a Jesuit scholar on the faculty of Fordham University (N.Y.) where he serves as professor of political science. His major contribution to just war theory is a book published in 1996 entitled, *Just War: Principles and Causes*. Regan begins his book by reminding readers that human beings are rational creatures (1996, 4). As such, they possess the capacity to determine whether or not war can be justified and under what conditions such a war can be fought. According to a fellow scholar: "Regan outlines the pacifist and Marxist critiques of war but counters the arguments behind both of them. He explores the biblical texts that support and forbid war. But in the end, he appeals to reason to discern when or if war is ever justifiable" (Sittser 1998, 694).

Part one of Regan's book outlines the guidelines or criteria of traditional just war theory, including argumentation leading to what he describes as "the just war decision." He broadly covers the criteria for going to war and for just behavior in war (*jus ad bellum* and *jus in bello*), paying special attention to what constitutes just authority in declaring war and suggesting that the most just authority in this historical era may be with the United Nations (Regan 1996, 44). He also explores the justice of war-making power, or authority, a critical facet of any contemporary discussion of just war. After presenting the traditional Augustinian / Thomistic arguments for just war, Regan studies the contemporary challenges to traditional just war thinking. He specifically mentions those challenges brought on by insurgency, terrorism, and nationalism. Sittser notes that for Regan: "Many causes are problematic from a just war tradition, especially in the case of interventionist wars" (Sittser 1998, 695). For Shannon, another scholar who writes about

the just war theory, Regan stimulates intellectual discussion of the topic by asking whether "the violence inflicted by a revolutionary group or an ethically related majority of a country's population might ever be justified" (Shannon 1997, 27).

Regan explores, in depth, the justice of interventionist or aggressive wars. He acknowledges that, while we have a moral obligation to avoid the bloodshed of armed conflict whenever and wherever possible, we also have a moral obligation and responsibility to intervene in situations involving such crimes against humanity as genocide, ethnic cleansing, and other grievous acts that violate basic human rights. So, while Regan holds that the most powerful justification for declaring war in the post-Cold War world is the defense of nation-states' rights, he entertains the possibility of just intervention by a nation or coalition of nations to rescue nationals, "to prevent or deter foreign governments from lending support, and to destroy terrorist bases ..." (Regan 1996, 54). Regan urges caution and reflection, however, before a country or coalition decides to intervene militarily in the internal affairs of another nation.

In his sixth chapter, Regan defends a contemporary view of noncombatant immunity. He asks: "Are there times when it might be better to lose a battle or even a war rather than risk the injury or death of innocent noncombatants?" In the same vein as Johnson's position in *Morality and Contemporary Warfare*, Regan observes that the *jus in bello* criteria of discrimination and proportionality are sometimes lost in modern warfare. Regan observes that ...

> the rigid distinction between military combatants as the guilty enemy and civilian noncombatants as the innocent enemy has become obsolete. Civilians produce the weapons and equipment integral to the waging of modern war, and civilians maintain a modern belligerent's industrial infrastructure (its railroads, roads,

communications systems, and electric power), which is also integral to the waging of modern war. (Regan 1996, 90)

This danger is that, given its power, modern military technology can inflict far-reaching damage on both those targeted and those in a non-warrior status. This fact adds yet another dimension to the discussion of discrimination (Regan 1996, 114). Like Michael Walzer, Regan questions whether noncombatant discrimination should be an absolute principle never to be violated or compromised. On this issue, Walzer argues that the principle of discrimination could be compromised in situations involving "supreme emergencies" (Walzer 1977, 261).

Regan's comments on terrorism (1996, 52-53) are especially relevant and timely given Israel's military incursions into Palestinian territory in recent years. He states that nations whose citizens are targets of terrorism, at home, abroad, or both, may have just cause to use military force to prevent or deter terrorism. Regan might even look favorably on Israel's preemptive use of deadly force against those planning terrorist acts. He believes that countries hurt by terrorist activities may also attack terrorist sites, even when that means violating the territorial rights or sovereignty of another nation-state. The Palestinians, of course, assert that they are the ones under *constant attack* by the Israelis; they claim that the Israelis have been seizing their lands for decades. In their estimation, this makes the Israeli settlers occupiers whose aggression must be resisted. In light of the injustices on both sides, no simple solution seems possible. Neither people, however, possesses a right of reprisal. Here Regan makes a clear distinction between punitive and deterrent military action. In doing so, he reflects the concerns of Augustine that force is never justified if it is used with hate, and not love, in the heart.

Regan concludes *Just War: Principles and Causes* with a series of case studies that allow readers to apply just war principles to real-world conflicts. Using eight conflict scenarios, Regan asks questions that need to be answered to determine whether an intervention is justified (Shannon 1997, 27). Regan asks whether it might be beneficial to empower the United Nations to carry out its peacekeeping charter with "military muscle." In doing so, he reflects the interventionist position of the Post-Vatican II Roman Catholic Church. In sum, Regan's presentation is recommended for anyone interested in a 21st century perspective on the theory of just war.

Michael Walzer

Michael Walzer, one of Princeton University's most notable scholars, is on the faculty of the School of Social Science, at its Institute for Advanced Study. Over the past three decades Walzer has written extensively on political theory, social obligation, tolerance, theology's relevance on contemporary thought, nationalism, just war theory, economic justice, the obligation of states, and numerous related topics. This dissertation will focus on his contributions to the just war theory. These contributions are found in his seminal, and, for some, controversial work: *Just and Unjust Wars: A Moral Argument with Historical Illustration* (1977).

Walzer defines just war theory as a set of ideas generated by humanity's experience of war and our reflection on that reality (Johnson 1999, 23). Focusing on aggression and convention, Walzer states that combat against aggression is the *sole*

justification for war, since the only just cause for initiating war is a wrong received. "We know the crime because of ... the peace it interrupts. [Peace is] not the mere absence of fighting, but ... peace-with-rights [is] a condition of liberty and security that can exist only in the absence of aggression itself" (Walzer 1977, 62). He passionately reflects on the reality of war as he continues: "The wrong [that] the aggressor commits is to force men and women to risk their lives for the sake of their rights. It is to confront them with the choice: your rights or your lives" (Ibid.).

In Walzer's opinion, the just war theory is based on aggression: "It explains when fighting is permissible, perhaps even morally desirable. The victim of aggression fights in self-defense, but he isn't only defending himself, for aggression is a crime against society as a whole" (Walzer 1977, 59). For Walzer, aggression is not always unjust. In Chapter Six of his book, he defends the potential use of military force even to intervene in the sovereign affairs of another country. Walzer's justification of aggressive force is qualified by restrictive parameters. For him, an example of this qualified use of aggressive force is India's invasion of Bangladesh in 1971. The goal of invading Bangladesh, he asserts, was to stop Bengal's aggression against Indian citizens. In this case, Walzer views intervention or aggression as justified and, quite possibly, morally obligatory.

Walzer highlights the innate tensions between the two major categories of just war theory: *jus ad bellum* (the theory of aggression) and *jus in bello* (the convention on just behavior during wars). He offers interesting insights regarding his *jus ad bellum* theory of aggression and points to a weakness in its most popular usage. As another scholar comments:

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Walzer argues that our basic moral intuitions concerning just causes for war are founded on a domestic analogy, according to which aggression is regarded as the international equivalent of armed robbery or murder. Such intuitions comprise what Walzer calls the *legalist paradigm*, a traditional theory of aggression, echoing our notions of civil law and order. While the legalist paradigm quite uncontroversially excludes wars of aggression and permits wars of self-defense, Walzer claims that it fails to allow for a variety of morally justifiable wars; for example, preventative actions such as Israel's Six-Day War [1967] and wars of humanitarian intervention and counterintervention. (Benson 1978, 1018)

Thus, like the theorists J. Bryan Hehir and James Turner Johnson, Walzer lays the groundwork for a broadened understanding of just cause, one that includes the possibility of aggressive force or humanitarian intervention, even in cases where national sovereignty is violated. This discussion is particularly relevant in light of today's frequent use of armed force in humanitarian intervention and peace operations across nation-state boundaries.

Like Vitoria before him, Walzer asks whether the case for a just cause can exist on opposite sides of the conflict, whether all belligerents might be able to claim a just cause for war. He comments that, because a government's propaganda machine makes it difficult to know the truth about just cause, the moral decision-making process is highly complex (Walzer 1977, 74). This complexity calls to mind the 2002 debate in the United States and the United Nations regarding whether war against Iraq is indeed justified after twelve years of failed diplomatic efforts. Thoughtful people ask: (1) Does the United States have just cause to declare war? (2) Does Iraq have just cause to develop offensive weapons? (3) Is the U.S. government as forthright as it should be in its description of the threat, or has it resorted to a propaganda campaign to win popular support for the use of military force?

Whatever the status of the just cause arguments, which Walzer describes as "aggression theories," once combat has commenced, all combatants are called upon to obey the rules for just behavior during war. As Benson notes: "Walzer examines these rules and claims that they, no less than the legalist paradigm, are founded on a theory of inalienable individual rights. In line with just war tradition, Walzer reminds readers, 'Contrary to popular impulse, just ends do not ordinarily justify illegitimate means' " (Benson 1978, 1018).

It is important to question whether Walzer stresses or overstresses the combatants' responsibility towards noncombatants in a more demanding way than that which is outlined in contemporary modern war conventions and international humanitarian law. Some scholars think so. In *Arms and Judgment: Law, Morality and the Conduct of War in the Twentieth Century* (1989), for instance, Sheldon Cohen takes exception to Walzer's views concerning the responsibilities of combatants in regards to noncombatants, arguing that he *overemphasizes* the nature of noncombatant discrimination in *Just and Unjust Wars*. Cohen suggests that this principle will be costly to those who must fight in armed conflicts. It is true that after examining the call or vocation of the warrior, Walzer asks warriors to place themselves at greater risk than noncombatants by virtue of their military role. For Walzer, the ethos of warriors is such that they must conduct themselves in combat with courage. He would have them put themselves at greater risk to protect the innocents of war, even at the cost of their own life and limb. "The first principle of the war convention is that, once war has begun, soldiers are subject to attack at anytime (unless they are wounded or captured)" (Walzer 1977, 138).

Walzer hints at the contributions of warriors to the evolution of just war theory, with its innate tension between what is called *military necessity*, the accomplishment of the military mission, and civilian immunity. On this point, Colonel Fleur of the Canadian Armed Forces writes that the law regulating armed conflict ...

> ...rejects the claim that whatever is necessary for victory is permissible. It forbids some things absolutely. Yet it recognizes military necessity as a legitimate consideration. For instance, ... a U.S. Air Force Manual states that the concept of military necessity has four basic elements: ... force needs to be regulated; ... force is necessary to achieve as quickly as possible the partial or complete submission of the adversary; ... the force [allowed] is no greater than needed to achieve this [goal]; and [force] is not otherwise prohibited. The universally accepted Law of Armed Conflict recognizes three aspects ... of military necessity: a. no action may be taken which is not militarily necessary; b. the law of armed conflict sometimes allows exceptions to its rules for good military reason; and c. the rule of proportionality tries to achieve a balance between the sometimes conflicting aims of military success and humanitarian protection. (Fleur 1998, 5)

Walzer posits an interesting perspective on the traditional understanding of the tension between military necessity and the Law of Armed Conflict for just war theory. He does so by presenting the principles of just behavior in war on a sliding scale: the greater the justice of one's cause or reasons for war, the more moral it becomes to disregard or minimize the Law of Armed Conflict with its rules of proportionality and discrimination. Walzer also poses an interesting question about the place of moral outrage in ethical decision-making. In the words of Johnson:

> Throughout *Just and Unjust Wars* Michael Walzer consistently relies on examples illustrating that the judgments underlying moral restraints on war are deeply rooted in experiences of repulsion, outrage, and rejection in the face of particular horrors of war. Yet, as *Just and Unjust Wars* also makes clear, moral outrage at a particular horror is by itself not enough; this has to be integrated into a larger system of moral judgment including such fundamental ideals as justice and fairness. (Johnson 1999, 18)

To illustrate the innate tensions that sometimes exist for those who must fight in war, Walzer uses an example from the Korean War. It was common practice in this war that, when American troops were fired upon and in danger, the United States military authorities would use tanks to return hostile fire and quite possibly call in artillery and/or aerial bombardment; this is standard operating procedure in the American military. While saving the lives of many American combatants, this practice took the lives of a number of innocent noncombatants whose only wrongdoing was to have been in the wrong place at the wrong time. In this instance, Walzer questioned this American practice, suggesting that combatants should have sent out patrols and been more discriminate in the use of their battle fires (Walzer 1977, 230).

The modern war convention is based on the principle that warriors willingly bear arms and are ready to die for the accomplishment of their nation's goals. On the other hand, while it is the combatant's duty to protect noncombatants, the combatant has rights and responsibilities, too. When an enemy elects to fight in the midst of noncombatants, using innocents as human shields, or when civilians voluntarily choose to aid their side's cause, then commanders must act equally discriminately and proportionally as possible to remove the threat, accomplish the mission, and provide for the safety of their unit. Therefore, in raising the ethical bar for combatants, Walzer does so at the expense of the combatants. He raises the degree of difficulty for all those trying to live the code of conduct outlined in the just war theory.

Walzer complicates the issue further by raising a related question: What if it is impossible to win a war (that is to accomplish *jus ad bellum* objectives) by following the

moral dictates of the traditional principles of *jus in bello*? Walzer suggests that, if success in war means winning the conflict through evil or unjust means, it may be necessary to lose a war rather than compromise these moral dictums He therefore poses limitations on how far warriors may go to achieve goals and win the war (Walzer 1977, 123).

Walzer, however, does provide some wiggle-room in this area. He describes the case of a *supreme emergency* where the reason for war is so just or so critical that the rules of discrimination and proportionality may in fact be overridden (Walzer, 229).

> The greater the justice of my cause, the more rules I can violate for the sake of the cause--though some rules are always inviolable. The same argument can be put in terms of outcomes: the greater the injustice likely to result from my defeat, the more rules I can violate in order to avoid defeat--though some rules [are always inviolable]. (Walzer, 229)

The argument continues in another of Walzer's books, *Spheres of Justice: A Defense of Pluralism and Equality* (1983). In it, while explaining the concept of distributive justice, he discusses the potential grounds for declaring a supreme emergency. For Walzer, a supreme emergency is the ultimate just cause, one that addresses grave injustices and threatens the survival of a nation or a people. In suggesting that criteria like proportionality and discrimination be tempered or waived in such an emergency, Walzer suggests that he is ready to accept a moral outrage or an evil *if* it averts or brings under control a greater evil.

James Turner Johnson describes *Just and Unjust Wars* as a reflection on the experience of past wars; for him, the book offers great moral insight into present and future wars. Johnson points to Walzer's offering an unusual version of human rights theory: "For Walzer, moral values, including rights, derive from the experience of

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history: we encounter the values that shape moral decisions through reflection on history, and historical events shape our understanding of what is morally valuable. [Walzer's book] *Just and Unjust Wars* has a pervasive concern with the historical experience of war ..." (Johnson 1978, 240). In sum, by addressing the moral dimensions of contemporary warfare, modern moralists like Johnson and Walzer help us adapt and expand the theory to meet its contemporary challenges. Walzer, for example, ends his book with these words: "For war is the hardest place: if comprehensive and consistent moral judgments are possible there, they are possible everywhere" (Walzer 1977, xvii).

William V. O'Brien

Throughout the Vietnam War (1954-1975), one of the most tumultuous periods of the Cold War era, many questioned whether any war could be just. William O'Brien of Georgetown University provided scholarly insight by his research into just war theory. O'Brien held the position of Senior Fellow in Law, Morality, and War at Georgetown's Center for Strategic and International Studies. As professor of government, O'Brien researched the legal limits and moral norms of the just war theory, especially in light of (then) contemporary trends in international relations and law. O'Brien is an important critic of the documents, trends, and leaders of the Roman Catholic Church, especially those relating to the field of just war. His two principal books on just war scholarship are *War and/or Survival* (1969) and *The Conduct of Just and Limited War* (1981). He is also renowned for a monograph published in 1979 entitled *U.S. Military Intervention: Law and Morality.*

In his preface to O'Brien's *War and/or Survival*, Paul Ramsey describes the political tenor of the book: "The main argument of the volume is for realism and against idealism in politics, ... and particularly on questions of war, deterrence, revolution, and peace with justice" (O'Brien 1969, xii). Ramsey describes O'Brien as a realist who, rather than deriding idealists, "humbly conforms his mind to the reality relevant to any proposed solution or moral judgment" (Ibid.). In the midst of the violence and controversy throughout the world regarding the Vietnam War, O'Brien studied international conflicts, concluding that wars could be fought both reasonably and morally, within the boundaries set forth in the just war theory. O'Brien, who also views himself a realist, takes a similar approach to the just war theory. He spends considerable effort examining the growing influence of the United Nations and other expressions of internationalism.

Regarding "total war," especially in light of weapons of mass destruction, especially nuclear weaponry, O'Brien views Roman Catholic Church writings as ambiguous or at least "potentially ambiguous" (1969, 25). He questions those who would condemn the concept of waging a nuclear war in retaliation for some kind of massive aggressive action against the United States. In a way, he argued the concept of nuclear deterrence decades before the American Catholic Bishops. In line with Johnson, while upholding noncombatant discrimination, O'Brien does not believe that noncombatant immunity precludes the right of a nation to defend itself with weapons of mass destruction. He states, "The absolute immunity of noncombatants from intentional direct attack cannot be justified as a moral imperative if the right of legitimate recourse to armed force is conceded" (Ibid.).

O'Brien is critical of the Second Vatican Council (1962-65) for not spending more time addressing issues of war and peace, especially its failure to articulate a contemporary interpretation of just war theory. He also takes a dim view of the Council's participants' silence in regards to violent revolution and insurgency. Finally, he criticizes the emphasis on a "universal natural law," an emphasis that in reality condemns one specific crime under that same universal law: genocide (O'Brien 1969, 46). O'Brien prefers to address his position through the eyes of a natural law realist:

> As a realist, I maintain the following positions on which this book is based: There is a natural law, implanted in the minds, hearts, consciences, and aspirations of men, and man's perennial quest for such a law is sometimes successful. This natural law gives normative guidance with respect to practical human problems. The content of natural law – and I would use the term *'the* universal natural law'-- is determined by a comparison between principles and rules deductively derived from fundamental concepts of men and societies and the actual principles and rules inductively identified in the patterns of behavior of men and societies. (O'Brien 1969, 46)

O'Brien wrote, of course, before the break-up of the bipolar world, at a time of growing disenchantment with the just war theory, at a time when James T. Johnson's so called crypto-pacifists were gaining a large following in American Catholicism. O'Brien, who does not shy away from the controversy, specifically addresses the critics of the just war theory. His targets include church documents, senior churchmen, and movements within the church. He rejects the claim that the new post-World War II internationalism and the development of nuclear weaponry have rendered just war theory obsolete. He rejects internationalism and those who place their hope for peace in the hands of some sort of world organization or authority:

> Thus, whereas the modern social teaching of the church on war and peace starts at the top--or at the end--of an a priori assumption that man is and ought to be inevitably involved in a process leading to unity under a world authority, I, in

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effect, respectively table that assumption, reject the implication that nations are in fact presently progressing in that direction, and urge immediate, concentrated attention to the materials and problems of war here and now in the world as it is. Most important, the problem is not the elimination of war; it is conflict management. (O'Brien 1969, 55).

Throughout the sixties, seventies, and into the eighties, O'Brien was a voice of dissent to those who have abandoned just war principles and who espoused the view that weapons of mass destruction have changed the laws of war forever. In 1983, he focused on nuclear issues in an article entitled "Just War Doctrine in a Nuclear Context" for *Theological Studies*. There he still wishes to guide those who teach just war and those who "must deal with the dilemmas of international wars, revolutions, and interventions..." (O'Brien 1969, 11). According to James Turner Johnson, O'Brien approaches just war theory "from a perspective close to international law, employing the terms 'war decision law' for *jus ad bellum* and 'war-conduct law' for *jus in bello*, which are the two thematic branches of the tradition" (Johnson 1999, 27). O'Brien argues for a higher law approach to war-peace problems such as found in the theories of Hugo Grotius in his classic work, *De Jure Bellis ac Pacis* (O'Brien 1969,48). The comments quoted in the paragraph above illustrate what might be called a prophetic insight into late 20th - early 21st century developments. While some of O'Brien's arguments and history are dated, *War and/or Survival* is a book with a message that will have relevance for generations to come.

O'Brien's other major examination of this topic was his book *The Conduct of Just and Limited War*, which he wrote to move just war theory from the theoretical to the practical level: "A good deal of the modern literature on just war is concerned with theoretical concepts and approaches. This book attempts to move beyond this literature to

serious application of these concepts and approaches to the issues of modern war"

(O'Brien 1981, 10). O'Brien addresses the concepts of just war, limited war, and the

parameters of offensive and defensive wars. While he views the defense of the nation-

state as legitimate and just, he finds offensive wars more problematic. He states,

> In classic just war doctrine, offensive wars were permitted to protect vital rights
> unjustly threatened or injured. Moreover, in a form now archaic, offensive wars of
> vindicative justice against infidels and heretics were once permitted. Such wars
> disappeared with the decline of the religious, holy war element as a cause and
> rationale for wars. Thus, the forms of permissible wars today are twofold: wars of
> self-defense and offensive wars to enforce justice for oneself. As will be seen,
> even the second is now seemingly prohibited by positive international law. But in
> terms of just war theory, it remains an option. (O'Brien 1981, 22)

O'Brien admits that first the League of Nations and now the United Nations

Charter (1945) have limited the rights of countries to use force as an instrument of

foreign policy. Article 24 of the United Nations Charter clearly states that "the threat or

use of force against the territorial integrity or political independence of a state" is strictly

prohibited (O'Brien 1981, 23). O'Brien's discussion of the permissible use of force

against another nation for humanitarian or justice reasons predates the debate that is

ongoing today about just intervention. Despite his aversion to the concept of offensive

war, O'Brien passionately argues the case for just intervention, a central topic throughout

The Conduct of Just and Limited War.

> Thus, modern international law has sacrificed justice in its attempt virtually to
> eliminate the competence of the state to engage in war unilaterally. The problem
> is that this decision to put peace, security, and stability above justice in the
> international hierarchy of values was based on the assumption that there would be
> both effective collective security to enforce the peace and the peaceful settlement
> of disputes. (O'Brien 1981, 23).

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O'Brien's arguments are decades ahead of their time. In his view, no international organization has the authority to ensure collective security or to enforce the peace. The world's nation-states still possess the autonomy, sovereignty, and power to dictate international politics and the conventions that guide them. As more and more states violate the human rights of their citizens and threaten those of their neighbors, the need for just intervention grows. Given the absence of an effective international tool to address these injustices, the problem becomes all the more significant.

Another of O'Brien's major themes is that of describing just war as limited war. He reminds us that the Hague Convention of 1907 states:

> The right of belligerents to adopt means of injuring the enemy is ... limited. [Therefore]... a belligerent never has the open ended right to use all means at his disposal and/or to use any means that will injure the enemy irrespective of their conformity to the rules of the *jus in bello*. ... [P]ermissible armed coercion must be limited, that is to say, controlled. (O'Brien 1981, 38)

In line with just war theory's criterion of proportionality, military means must be proportionate to military goals. This principle means that military necessity does not give combatants *carte blanche* authority to use any and all means at their disposal to fulfill military goals. Therefore, the military response, which must be proportionate to military ends, must also be proportionate to the object of the war being fought (O'Brien 1981, 40).

O'Brien uses the term "reasonableness" to describe just behavior, since the norm of reasonableness appears to be the central concept "...in all normative analyses of human behavior..." (O'Brien 1981, 41). For O'Brien, asking combatants to remain just in their behavior in war is a reasonable request. Like Paul Ramsey and as in his first

volume: *War and/or Survival,* O'Brien discusses *jus in bello* principles in light of weapons of mass destruction, especially nuclear weaponry.

O'Brien devotes three chapters to the development of case studies from World War II, Korea, and the Vietnam War, so that readers can apply just war theory to examples of contemporary conflict. O'Brien appears to use the same pedagogical method employed by Regan in his book, *Just Cause: Principles and Causes* (1996). O'Brien also tackled in 1981 and 1983 the morality of nuclear deterrence. The American Catholic bishops stated their view on this issue in their controversial pastoral letter: *The Challenge of Peace: God's Promise and Our Response* (1983). Finally, O'Brien presented arguments applying *jus ad bellum* and *jus in bello* principles to revolutionary and counterinsurgency types of warfare. Again, he analyzed critical issues that would eventually surface in the 1990s after the collapse of the bi-polar world.

While some of O'Brien's writings are at times Cold War-oriented, his arguments maintain relevance long after the end of the Cold War. He remains to this day one of the most important writers on just war theory, for many of his insights are just as relevant today as they were decades ago.

Paul Ramsey

Scholars like O'Brien and James Turner Johnson have stated that Paul Ramsey's writings on just war theory are probably the most important writings on the theory, if not the most substantive of our time. Johnson states that Ramsey's "just war theory

constitute[s] one of the most important thematic and substantive contributions of his thought" (Johnson 1991, 183). Michael McKenzie writes: "Especially in terms of contemporary Christian ethicists, no one has written more [on the just war theory than Ramsey]" (McKenzie 2001, 109). Ramsey's groundbreaking work on just war theory, which began with his publication of the classic, *War and the Christian Conscience* (1961), continued with a series of articles leading to the publication of *The Just War: Force and Political Responsibility* (1969). As Senior Fellow of the Center of Theological Inquiry and as President of the editorial board of the prestigious *Journal of Religious Ethics,* Ramsey influenced just war scholarship throughout the world.

Paul Ramsey's academic career lasted four decades, and, though he died in 1988, his academic legacy and scholarly contributions ensure that he will be remembered as one of the 20th century's greatest thinkers in the field of ethics, and most certainly, in just war scholarship. After completing his doctoral studies at Yale University under the intellectual mentorship of H. Richard Niebuhr, Ramsey established himself as an intellectual giant while on the faculty of Princeton University. There, during his tenure as professor of religion, he authored thirteen books, edited twelve, and wrote almost 200 scholarly articles.

Ramsey, well known for his insightful scholarly opinions and his strong views, never shied away from controversial topics or from tough academic debate. J. Bryan Hehir commented, "To encounter Ramsey was to meet a maverick whose views often ran counter to prevailing ethical and political opinion" (1988, 232). His pro-Vietnam War and anti-abortion positions were not particularly appreciated by the liberal circles of American academia, yet most of his intellectual opponents would argue that sparring with

Ramsey helped them to better clarify and/or articulate their own positions even when these opinions radically differed from his. One scholarly opponent, James Gustafson, described it in this way:

> In North America Paul Ramsey has been a towering and forceful figure for almost four decades: his writing has forced persons with alternative views to come to grips with his thought, and had a deep impact on a younger generation of authors. He has been a persistent critic of moral fads, a steadfast proponent of the Christian ethics of love, and a vigorous participant in debates about public policy and medical ethics. (McKenzie 1999, 14).

Paul Ramsey did not fit the mold of a contemporary Protestant ethicist. His focus on just war ran contrary to the scholarly trends of other ethicists of his day: "In the 20th century, Protestant social ethics within the United States predominantly rejected any concentrated effort on the development of a principled ethic for Christian participation in war. This makes Ramsey's development of just war unique and anomalous" (Long 1990, 1991). Some state that scholarship on the theory of just war received little attention, thought, or development in American Protestant circles before its popularization by Ramsey. "When Ramsey began to write on war and peace in the late 1950s, the just-war ethic was an acknowledged but seldom used resource in the Christian Church. Ramsey's work led the way for a generation of younger scholars for whom he was both a guide and a critic" (Hehir 1988, 232).

Before Ramsey, writers of just war theory fell into one of the two early Christian schools of thought on war and peace: pacifism and realism. His first volume on just war, *War and the Christian Conscience: How Shall Modern War Be Conducted Justly?* (1961), "...is a uniquely successful attempt to walk the middle ground between these two views ... and [to] reinstate the ancient Christian theory of the just war" (McKenna 1961,

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59). Agreeing with those of the realist school Ramsey believed that the use of force could be justified and, further, that the limited use of force was sometimes necessary to maintain the international order.

It is virtually impossible to understand Paul Ramsey's views on just war without some knowledge of his approach to *Basic Christian Ethics*, the title of his first book in 1950. Ramsey believed that the most prominent force in Christian ethics should be that of Christian love. Ramsey believed that a focus on *agape* or divine love would be one way "...to bring religion back into the public ethical discussion. In particular, he contends that the use of Scripture and reason, and his blend of *agape* and optimism toward natural morality would result in an ethics that will get a hearing in our postmodern culture" (McKenzie 2001, xx). Ramsey defines *agape* in an article in the theological journal *Interpretation*, where he writes about the biblical norm of righteousness: "How should one who follows biblical ethics go about making an ethical decision? Both OT and NT teach that God means to mold human righteousness into God's righteousness. *The biblical basis for one's treatment of a stranger is God's dealings with the Israelites* (Exodus 22: 21; 23: 9) *and Christ's love for us*" (Ramsey 1970, 420).

Paul Ramsey believed that it was a Christian's duty to love his neighbor and therefore to defend his neighbor against unjust attack. "Ramsey's ethics may be thought of as 'love (*agape*) transforming natural morality. Divine love (expressed variously by Ramsey as 'neighbor-love' or 'covenant-love') is always primary in his ethics; but Ramsey never loses his healthy respect for the moral capacities of humanity" (McKenzie 1999, 17). Christians recognize *agape* love in the person, life, and message of Jesus

Christ, but rather than viewing *agape* as a divine attribute, they view it as a human virtue "normative for themselves and [are thus] inspired to practice it" (Crossley 2001, xii).

Ramsey's focus on Christian love or *agape* leads him to focus especially on the *jus in bello* right behavior of just war theory, but he does not ignore the *jus ad bellum* justification required for declaring war. Like Augustine, Ramsey believed that Christians could support the use of force in international politics and remain faithful to Jesus Christ as his disciples. He does this by stressing what can be described as the *agapic* defense of the use of force. He believed that wars fought out of love for one's neighbor are just wars. He counters the argumentation of Christian pacifists who reject the use of force in any situation by insisting that the threat of force and the use of force are necessary parts of the political dialogue among nations.

Much in line with Augustine, he taught that, as citizens, Christians have the right to defend their country, so long as the authority for the use of force rests ultimately in Christian love, which he labels *agape*. To link his just war position to that of mainline Christian thinking, Ramsey connects his concept of love for one's neighbor (*agape*) to that of right intention (*jus ad bellum*). He writes, "It is the work of love and mercy to deliver as many as possible of God's children from tyranny, and to protect [them] from oppression" (Ramsey 1968, 143). In sum, Ramsey questions the morality of any war employing immoral means to achieve its ends or objectives. This is his reaction to the Protestant school of thought that was concerned almost exclusively with ends, a school which he contended had developed "...a calculus of consequences..." (493). Such a system can be described as consequentialism or utilitarianism.

In *War and the Christian Conscience* Ramsey states, "It is only an agape-ethic facing exclusively toward ... future consequences that today allows outstanding theologians to reduce the morality of means to prudential calculation of results" (Ramsey 1961, 13). Thus, Ramsey rejects "to the absorption of the question of the means of warfare into that of ends" (Springer 1962, 493).

Ramsey uses Matthew 5: 39 to build a preferential ethic for protection, the same "turn the other cheek" passage that pacifists use to forward their theology of non-violence (Ramsey 1950, 169); some call this Ramsey's *preservation motif.* Ramsey therefore addresses the same realist-idealist tension that existed in the early church: In ordering followers to turn the other cheek. Ramsey asserts, Jesus " does not here ... say how men, who themselves ought not to resist ... when they alone receive the blows, ought to act in more complex cases where non-resistance would in practice mean turning another person's face to the blows of an oppressor" (Ramsey 1950, 167). In fact, Ramsey explains that Jesus himself "...showed indignation, even wrath, over injustice, using vitriolic words as weapons against the devourers of widows' houses" (Ibid.).

Ramsey holds all sides in a conflict accountable for their participation and actions. Like Vitoria three centuries before him, Ramsey wonders whether all belligerents could rightly claim just cause. According to Ramsey, "The theory of just war was never meant to imply the presence of real justice on one side [and] its absence on the other. It does imply, however, that distinctions can still be made regarding competing and relative claims for justice" (McKenzie 2001, 114). International conflicts are rarely as simple as good guys in white hats against bad guys in black hats. Ramsey's impassioned defense of using force out of justice and love might appeal even to the most orthodox of pacifists.

"Throughout his career Paul Ramsey returned repeatedly to the seminal works of Augustine to clarify both the foundations of Christian moral thought and its application to problems of social ethics" (Davis 1991, 31). He therefore possesses a special affinity with the Bishop of Hippo in regards to just war theory.

Further, while Ramsey rejects the idealists' stance that no war can be just, he does uphold their view that absolute or total wars are always unjust. He believes that limited wars can remain just so long as they are fought justly, and for Ramsey wars are fought justly when they remain focused on the Christian ethic of *agape:* "Ramsey draws on the thought of both Augustine and Aquinas in his search for a just war ethic that can be driven by *'agape'* yet takes the sinfulness of humankind into account" (McKenzie 2001, 113). So, for Ramsey, all wars must be limited wars for only such wars project this *agapic* or Christian love. Total war, on the other hand, speaks volumes about all that Augustine explained was dangerous about war. While total war is viewed as an outright rejection of the *agape* ethic, limited war focuses people on the *agapic* ethic in two ways. First, it keeps people focused on the goal of establishing a just and lasting peace (which, as we have seen, should be the goal of any war). Second, limited war stresses Ramsey's primary concern with right behavior *in* war rather than just reasons for going *to* war. According to James Turner Johnson, "Clearly in Ramsey's thought, as in Ambrose's, the primary ethical question for Christians is not whether (or when) to engage in violence but how to act out of love toward neighbor" (Johnson 1991, 188).

In writing that Ramsey's views on the principle of discrimination in war flow directly from his focus on *agape*, Johnson holds that Ramsey views the justice for war and in war through a distinctively Christian lens. In that sense, Ramsey's view of

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discrimination is a distinctively Christian contribution to just war theory (Johnson 1999, 36). Johnson observes, "Ramsey's own just war thought focuses almost entirely on the *jus in bello* [where he] stresses discrimination as morally prior to proportionality" (Johnson 1991, 184). Michael McKenzie adds that *jus in bello* for Ramsey is what separates limited or just war from total or barbaric war (McKenzie 2001, 116). Springer writes, "Seldom has the theory of total war and direct attacks on civilians been so convincingly censured." (1962, 494)

Ramsey was very critical of the Christian Church for getting involved in issues with which it had little knowledge or expertise. Believing in a separation of church and state, he applied very different roles to each. As McKenzie notes: "One cannot possibly understand Ramsey's political thought unless one has a firm grasp on his envisioned roles for the church, the state (or magistrate), and the private citizen" (1999, 21). Ramsey believed the church's role was to proclaim the word of God "...and to speak on matters for which it has been given a clear mandate" (Ibid.). While he does recognize the church's role to be prophetic in the modern world, he expresses some doubt that the church possesses the right or sometimes the expertise to speak with authority on most civic issues. According to Michael McKenzie, Ramsey would probably reject both poles of religious-civic interaction, that is, the activist wings of Christianity (McKenzie 1999, 3). He would disagree with the Christian right of the Protestants and the Christian left of the Roman Catholic Church. He would disavow both the churches that reject involvement with the affairs of state and those that follow a radical liberation theology. While he would agree that the church has the right to voice an opinion, as he clearly does, he

would minimize the weight of the input by explaining that the church's voice was merely one voice among many voices.

Ramsey wrote extensively on weapons of mass destruction, particularly on nuclear weaponry, throughout his later contributions. While he found fault with a nuclear deterrence that targeted population centers and thus violated the discrimination principle of just behavior in war, he did not condemn the total use of these weapons of mass destruction. His justification was simple: *agape* gives a Christian license to defend his neighbor against unjust attack, aggression, or injustice. Therefore, this same principle of Christian love should allow a government to defend itself against nuclear weapons in a strategy of deterrence when an enemy threatens to employ those same weapons.

In accord with his realist approach to world politics, Ramsey did not condemn the development or potential use of all nuclear weapons. In fact, he calls for the development of smarter nuclear weapons that might more accurately discriminate combatants from noncombatants. He neither embraces nuclear pacifism nor condemns all uses of nuclear weaponry. As Miller remarks:

> In his most comprehensive treatment of counterforce war and counterforce nuclear war, *The Just War* [1970], Ramsey weaves the gist of his limited-war position into an elaborate nuclear strategy. Two basic features of this refinement stand out. First, Ramsey argues that, as a matter of policy, the United States should renounce the first use of all nuclear weapons except tactical weapons used in defense against invasion. That is, this nation should renounce the first use of any and all nuclear weapons against an enemy's homeland – even against counterforce targets like military installations (1968, 236-241). The first use, then, should be confined to Western territory and should be designed to supplement conventional forces. (1988, 209)

Ramsey did not support a unilateral disarmament of the United States. Instead, he called for a *deferred repentance* allowing society the time it needed to move towards a

more moral defense or deterrence, a more counter-force versus counter-people position (O'Brien 1961, 521). Limiting the use of nuclear devices to the protection of territorial boundaries would allow the use of nuclear devices only for "sealing borders," a defensive, not offensive use of nuclear weaponry. J.T. Johnson observes that he admires both Ramsey and Walzer because neither was held intellectually captive by the "bipolar conception of international politics" (Johnson 1999, 10). He credits both for the ability to think strategically in an era often bogged down by the politics and paranoia of this historical epoch (Ibid.).

In reviewing Ramsey's book, Joseph McKenna was so impressed by Ramsey's contributions to just war deliberation that he offered the following prediction, which proved to be correct: "If Ramsey's book gains the influence it deserves in Protestant circles, it should contribute greatly to the establishment of widespread support among religious-minded people for an American foreign policy which is strong, not reckless, expedient but not immoral" (McKenna 1961, 59). McKenna's observations hold true not only for *War and the Christian Conscience,* but for Ramsey's many contributions to the development of the theory of just war.

In writing on the just war theory and the morality of war, Ramsey builds on his central theme of *agape*: love must always be the driving motivation, guiding principle, and primary duty for those called to the Christian life. The Hastings Center wrote a tribute that may just become the definitive memoriam for this intellectual giant:

> [Paul Ramsey's] imagination would not allow him to be confined by the traditional academic areas of theology. His was a living theology, drawn from the past, but deeply concerned with the human condition and the ethos of the here and now. He did not shrink from applying his logic and his sensitivity to such difficult questions as the morality of warfare and the role of nuclear deterrents, nor was he

ever deterred when his topic and sensibility drove him to either unpopular or unfashionable positions. This was not a man to compromise his integrity for approval. (Gaylin and Callahan 1988, 13)

Drew Christiansen

Drew Christiansen, is a senior fellow at the Woodstock Theological Center in Washington, D.C., and a former director of the Office of International Justice and Peace, United States Catholic Conference. He has written numerous articles on just-war theory and has been a frequent contributor to the popular theological periodical *America*. He is a frequent contributor to theological journals and is noted for his ability to track current trends in the Catholic Church, especially the teachings of the Magisterium.

Two of Christiansen's most critical contributions to just war thinking are: "Peacekeeping and the Use of Force: Behind the Pope's Stringent Just-War Teaching," and a paper presented to the United States Institute of Peace February 5, 2001 entitled "Catholic Peacemaking: From *Pacem in Terris* to *Centesimus Annus*." These articles are important contributions to a contemporary understanding of Roman Catholic just war teaching. By their analysis of modern papal pronouncements and trends, they show an ideological shift in the Vatican and American bishops' policies. Their positions have moved from the post-Vatican Council II idealist teaching on just war (what James Turner Johnson would describe as a crypto-pacifism) to a more realist position, which could be described as reluctant interventionism and peacemaking.

Just war theory has been a distinctively Catholic teaching since the early church Fathers. During the Cold War, certain official papal pronouncements and encyclicals caused some to question whether the church was moving away from its traditional mid-

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ground teaching to a complete rejection of the use of force as an instrument of national policy. To many, post-Vatican II church teaching shifted to a more pacifist position and temperament, due in no small part to the influence of some powerful Catholic pacifist intellectuals, such as Thomas Merton and Dorothy Day.

In tracing recent trends in official pronouncements, Christiansen explores major movements of both the modern popes and certain national bishops conferences. In particular, he discusses the papacy of John Paul II and the American Catholic Bishops' Conference since Vatican Council II.

While the official teaching presented in the Catechism of the Catholic Church (USCC 1994, 554-559) continues to espouse and present just war theory as the orthodox teaching of the church, papal encyclicals such as *Centesimus Annus* (May 1, 1991) echo the sentiments of a number of 20th century popes who appear to reject war as an instrument of national policy. The words of Benedict XV (1854-1922) first professed after World War I were made famous by Paul VI (1897-1978) in his address to the United Nations General Assembly, October 4, 1965: " *...jamais plus la guerre, la guerre jamais plus! C'est la paix qui doit guider le destin des peuples et de toute l'humanité* ["War never again, never again war! It is peace that must direct the destiny of peoples and of all humanity."] (Paul VI 1965, 4). Christiansen believes that just war thinking lost some of its prominence in contemporary Catholic teaching, accompanied by "...a growing presumption against the use of force and an increased appeal to strategies of nonviolence and negotiation..." (Christiansen 1999, 6). Christiansen then analyzed the sentiment of John Paul II as follows:

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Part of the theological background of this shift may be found in Pope John Paul's insight that the person willing to suffer nonviolently is better able to discern the means with which to defend justice, along with the suspicion that war represents an egregious manifestation of the culture of death.... Just-war norms continue to be cited, though in cautionary or critical, rather than permissive, fashion. Particularly important are the constraints of civilian immunity, proportionality and reasonable hope for success. ... The canon of just cause seems to have been greatly narrowed. It appears to admit only defense against aggression, and in some readings only aggression already in progress, and humanitarian intervention when whole populations are at risk. (Christiansen 1999, 7)

Christiansen's premise is that this narrower interpretation of the just-war theory falls in line with the modern papacy's role as a "moral power" and a "voice of conscience" in international affairs.

In a paper presented to the United States Institute of Peace entitled "Catholic Peacemaking: From Pacem in Terris to Centesimus Annus," Christiansen acknowledges that the Roman Catholic Church's role in building international peace has grown enormously in the past half century. Christiansen seems to support the position that the church would be better served if more emphasis were placed on peacemaking and less on the just war theories of the past. Christiansen believes that Pope John XXIII (1881-1963) through personal intervention in the Cuban Missile Crisis (October 1962) and in writing his critical encyclical, *Pacem in Terris* ["Peace on Earth"] (April 11, 1963) set the stage for Catholic peacemaking and "...provided the motivation for the most sustained Catholic contribution of the post-conciliar [Vatican II] period, namely, the church's defense of human rights as the foundation of peace" (Christiansen 2001, 1).

He points out that the Catholic Church has traditionally taught that peace is more than the absence or avoidance of war. "The Catholic mission of peace consists of four elements: (1) human rights; (2) development; (3) solidarity; and (4) world order"

(Christiansen 2001, 2). Christiansen writes that a "Catholic cosmopolitanism" has emerged in the past few decades, prioritizing the rights of individuals over the rights of states and promoting a universal common good to be upheld by transnational organizations like the United Nations. Christiansen states that the church is convinced that peace comes with authentic human development. Although this development is more than economic, the developed nations of the world must share their riches and the means of production with those underdeveloped nations struggling to survive. Here, the Church sees development as an alternative to war, since development addresses the issues that breed unrest and insurgency. The church also stresses the concept of the universal human family, one that espouses a solidarity that transcends nationality, race, or creed. This spirit of solidarity builds interdependence of peoples and nations, thus diffusing the animosities and hatreds that are bred by artificial differences. This perspective helps to minimize those nationalistic, self-serving, and restrictive policies that potentially lead to conflict and bloodshed.

Lastly, Christiansen writes that Catholic peacemaking teaches the importance of world order and the rejection of policies or systems that threaten this order. For example, although the Church views the use of force as potentially threatening to world order, it supports its limited use as a last resort for humanitarian interventions. The production and use of nuclear weapons are viewed as a potential obstacle to world order and peace, even if they are used to deter aggression.

Christiansen praises the personal diplomacy of John Paul II and the moral authority he has brought to international relations. He points to the Vatican's help in toppling (through peaceful means) repressive regimes in Eastern Europe, Haiti, and East

Timor (occupied by Indonesia). In his view, Vatican efforts can be described as "a diplomacy of conscience" whose primary focus is the good of the human family. Keeping the peace, defending human rights, and protecting human freedoms are some aspects of this effort. The direction of Catholic thinking and the future of just war theory for Drew Christiansen are as follows: Future discussion must focus more on promoting of peace and eliminating the causes of dissension or war, and less on the justification for and the means of conducting war. He points to a new direction for the theory of just war: building a peace built on the development of mechanisms and policies that ensure justice and quality of life for all of God's people.

Roman Catholic Social Teaching

As this dissertation has shown, the Roman Catholic Church since its foundation has been vitally interested in the just war theory. The Fathers/Theologians of the early church, such as Origen, Ambrose, and Augustine, as well as leaders in the scholastic schools like Aquinas, Vitoria, and Suarez, have linked this church more with the just war tradition than any other faith or denomination. It is therefore fitting that the significant contemporary writings of the modem popes, bishops' conferences, and church councils be included in this chapter on contemporary theorists.

The 20TH Century Popes

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Roman Catholic pontiffs communicate with the people of God through visits, letters, greetings, audiences, and encyclicals. Given the unique status of the Vatican in both diplomatic circles and in organizations like the United Nations, it is no surprise that papal encyclicals have a broad readership and influence in the modern world, especially those encyclicals dealing with war, justice, and world peace:

> The word encyclical is a Greek derivative, meaning a letter that goes the rounds, an encyclical letter. From the early days of the church many bishops referred to their peace and communion letters in this way; these letters, given by their bishops to Christians traveling abroad, stated that they were, 'in communion' with, i.e., received communion in their local church, and were therefore recommended to other local churches. Since the late sixteenth century, the title has been used to refer to papal letters concerned with doctrinal or moral matters, exhortations, warnings or recommendations. (Charles 1998, 12)

Encyclicals issued in the modern era offer spiritual and moral/ethical guidance to the membership of the universal Catholic Church and to a number of other "men of good will" on a wide range of contemporary issues. Popes base their teaching on scripture, church tradition, classical and contemporary knowledge, or sometimes, politics.

These official church teachings "...throw light on the obligations of a Christian in the field of social morality, and the binding force of moral judgments on these matters is that of the ordinary teaching of the *Magisterium* of the church. ...The authority of the encyclicals extends to matters of moral principle and their implication only; in them it is binding on the conscience of members of the church" (Charles 1998, 14-15). Here then are the most significant of these Papal pronouncements, and the men who formulated their teaching.

Pope Benedict XV (1854-1922; Pontiff: 1914-1922)

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On September 3, 1914, just a little more than a month after the start of World War I, Giacomo Cardinal Della Chiesa was elected Pope and took the name, Benedict XV. Over the course of the next four years, World War I took the lives of more than ten million persons, and millions more suffered from the ravages of this first global war. Horrible battles at places like Verdun and the Somme robbed Europe of the flower of its youth, and millions of soldiers lost their lives through use of new and devastating weapons of destruction. The widespread use of poisonous gas left thousands of individuals, both combatants and noncombatants alike, debilitated for life. The harsh terms of the Treaty of Versailles left Europe on the brink of political and economic chaos. This chaos left Europe ripe for economic hardship, political instability, and the birth of totalitarian regimes that surfaced in Germany, Italy, and Russia shortly after the war's end.

Pope Benedict XV issued his first encyclical, *Ad Beatissimi Apostolorum*, his appeal for peace, on November 1, 1914, just two months after his elevation to the papacy. Echoing the sentiments of his predecessor, Pius X, he called for the peaceful settlement of international disputes, a more effective platform for discussion and eventual arbitration of international disputes through means other than the use of force: "Surely there are other ways and means whereby violated rights can be rectified. Let them be tried honestly and with goodwill, and let arms meanwhile be laid aside" (Benedict XV cited in Charles 1998, 44). Benedict was restating an important dimension of the church's just war teaching: that force only be used as a last resort.

During the war, Benedict taught *jus in bello* principles in the way he conducted his papacy. He helped arrange prisoner exchanges between hostile forces, he bargained for the timely release of civilians, other noncombatants, and wounded prisoners of war, and he facilitated the transport of some prisoners to neutral territories. In doing so, this compassionate Pope set a humanitarian tone that positively impacted one of the most brutal wars in history. The Vatican's intervention in the Middle East, a location where some of the war's most horrible atrocities were committed against innocent civilians, earned the praise and admiration of the Islamic Sultan who addressed Benedict in these words: "To the great Pontiff of the world tragedy, benefactor of peoples without distinction of race or creed" (Charles 1998, 45).

Benedict XV should also receive credit for his pioneering efforts in promoting the just war category of *jus post bellum* (justice after a war). In both his 1918 encyclical, *Quod Iam Diu* (a treatise on the future peace conferences) and his 1921 encyclical, *Pacem, Dei Munus Pulcherrimum* (on peace and Christian reconciliation as gifts of God), the Pope pleaded that post-war agreements be just and fair. Unfortunately, his advice went unheeded and the resulting political climate gave birth to the seeds of totalitarianism and an even worse global conflict, World War II.

In some of his most seminal writings Pope Benedict suggested the creation of an international commission to oversea post-war disarmament and the establishment of an organization to facilitate international disputes before they evolved into bloody conflicts. Some of these ideas were voiced in the proposals of President Woodrow Wilson's, most especially, his Fourteen Points. For example, Benedict called for the creation of an international arbitration group that very much resembled the future League of Nations. In

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fact, although Benedict was never credited for his contributions, many of his post-war ideas for developments and peace initiatives were implemented.

Putting *jus ad bellum* and *jus in bello* principles to work during and after the First World War offered some principles for the development of *jus post bellum* in the post-armistice period. This pope must certainly be counted among the 20th century's most important just war contributors.

Pope Pius XII (1876-1958; Pontiff 1939-1958):

Before his elevation to the Papacy, Cardinal Eugenio Pacelli worked more than forty years in the Vatican's Diplomatic Service. After World War I, Archbishop Pacelli served in war-ravaged Germany where he directed relief efforts to refugees and the poor. While Pacelli was stationed in Germany, his papal predecessor, Pius XI (1922-1939), issued a warning to the world. Calling totalitarianism a threat to world peace, Pius XI outlined his thoughts to the bishops of Germany on the church and Third Reich in his encyclical, *Mit Brennender Sorge*. Prior to his election as, Pius XII, Pacelli held the prestigious position of the Vatican's Secretary of State.

In the first years of his difficult and controversial papacy, Pius XII spent most of his time dealing with the issues and crises brought about by the Second World War (1939-1945). Through papal encyclicals, radio messages, sermons, speeches, and written communiqués, Pius advanced his diplomatic, theological, social, and humanitarian

agenda. Notable among these are his famous "Christmas Addresses" released during the war:

> The motto of his pontificate reveals his interest in the work of the world. [His] *Opus Justitiae Pax*, [Peace is the work of justice] and his wartime message to the peoples of the world [were] a message of peace and justice in Jesus Christ, God made man, whose death and resurrection had raised his brothers and sisters to a dignity which must be recognized in the way they are treated on earth. The fluctuations of the fortunes of the Axis and the Allied Powers during the war necessarily conditioned the responses of the Holy See. There were two main phases to the conflict in terms of world-wide geopolitics and Pius XII was at all times concerned to face the immediate issues with an eye to the possible outcome of the struggle. (Charles 1998, 105)

Capitalizing on his extensive diplomatic experience, Pius presented suggestions for a new world order in his 1940 Christmas Address, an order that could overcome the hatreds and misunderstandings of the past. He forwarded a political philosophy that set aside an ethic "according to which utility is the basis and rule of might [in which] 'might makes right,' and restored a serious and effective moral sense in international life and relations..." (Charles 1998, 111).

In 1941 Pius XII called for the outlawing of *total war* and an end to the arms race. In 1943, this pope reminded the world that, when the war ended, it must end with a peace based on justice and right, not material considerations or vindictive attitudes. His words echo the sentiments of Saint Augustine. Looking towards the establishment of a post-war world order, like Benedict XV, Pius suggested that the nations of the world create an international organization to maintain peace and deter aggression. He asked that defeated nations be treated with justice and empowered with hope.

While the pontificate of Pius XII is regarded by some as one of the most controversial in church history, a number of historians credit this pontiff with significant *jus in bello* initiatives during the war and for advancing a progressive *jus post bellum* agenda for use during post-World War II armistice talks. He is also credited with narrowing the criteria for *jus ad bellum* to one just cause: to defend against aggression. In doing so, Pius XII eliminated the aggressive use of force in Catholic just war theory.

In a phrase that his successors, John XXIII and Paul VI, would adapt and make more widely known, Pius reminded humanity that peace is more than the absence of war; he suggested that true peace is the establishment of justice, peace, and a quality of life offering hope to all. He also linked the potential for peace to progressive disarmament and the establishment of some sort of monitoring organization that might ensure international compliance by all nations and thus build peace in the world. Pius XII also recognized the need to establish war tribunals or some sort of international court to deal equitably with the question of war crimes.

Throughout World War II, Pope Pius XII, in his pastoral messages and in his official teaching, reminded people at war that they must not lose hope in the establishment of a just and lasting peace. As one of the world's spiritual and moral leaders, he offered the world community recommendations as to how to go about fulfilling that dream. If Pius had any shortcomings in his vision and implementation of just war doctrine, it was in the area of conscientious objection. According to Robert Daly, S.J., Pius XII rejected selective conscientious objection as part of Catholic just war tradition. This viewpoint was eventually reversed by the teachings of the Second Vatican

Council (1962-1965) when the Council Fathers showed support for Catholics claiming conscientious objection to war.

Pius XII's restriction of just cause to self-defense (1944) is considered one of the most important Roman Catholic *bellum justum* developments of the 20th century. In essence, he removed "...the right to punish an offense and the right to recover something [unjustly taken]..." as legitimate or just causes to war (Dwyer 1987, 1094). Perhaps his most profound statement on war and peace was given in his radio message of August 24, 1939, given just a short time prior to Germany's invasion of Poland, an event that inaugurated the Second World War. These words are also found in his successor's (John XXIII) most famous encyclical, *Pacem in Terris*: "Nothing is lost by peace; everything may be lost by war" (Gremillion 1976, 225).

Pope John XXIII (1881-1963; Pontiff: 1958-1963)

When the Cardinal-electors selected 77 year-old Giuseppe Cardinal Roncalli to be Pope in 1958, they probably thought they were electing a caretaker to be leader of the Roman Catholic Church. To the surprise of many, the papacy of John XXIII evolved into one of the most progressive and forward-looking pontificates in the history of the modern Catholic Church, for this Pope would eventually convene an Ecumenical Council that would forever change the relationship of the church to other religions and denominations, as well as to the world-at-large.

John XXIII issued two major encyclicals during his reign as Pope: *Mater et Magistra* (on Christianity and social progress: the church in her dual role as mother and teacher of the world), and *Pacem in Terris* (Peace on Earth: on establishing universal peace in truth, justice, charity, and love). According to Rodger Charles, these two encyclicals should really be treated as though they are contiguous because they so splendidly blend into one another (Charles 1998, 169). Just six months after the Cuban Missile Crisis, and fearing the possibility of a thermo-nuclear war, John XXIII issued his most famous encyclical *Pacem in Terris*. "It is reliably reported that [Pope] John's proximate decision to write *Pacem in Terris* grew out of the nuclear confrontation during the Cuban Crisis, when Kennedy and Khrushchev drew up 'eyeball to eyeball'" (Gremillion 1976, 71). While the encyclical *Mater et Magistra* explored some of the same issues covered in Leo XIII's *Rerum Novarum* (May 15, 1891),

> *Pacem in Terris* goes on to deal with the question of political ethics, national and international, the framework within which mankind had to work. Aware as never before of the physical limitations of the earth, and the dangers of mankind destroying itself if men did not learn to work together in justice and peace, humanity had the most compelling reasons for finding the means to these ends. Two world wars, the Cold War that followed the second one, and the growing awareness of the lunacy of the arms race, especially as a result of the Cuban missile crisis in 1962, concentrated minds on the need for a new world order. The realization that human solidarity demanded more concern to improve the conditions of life in the third world, not least because injustices on such a scale were a threat to the security of all, reinforced this condition. (Charles 1998, 169)

Pacem in Terris specifically points to the world's arms race as a significant reason for the depletion of resources that could and should have been used to address the suffering of the world's poor. As another commentator remarks:

> Pope John XXIII faults the arms race for the climate of fear it produces, the economic resources ... it consumes, and the immoral destructiveness it threatens. He calls for progressive nuclear disarmament and for recognition of the United

Nations as a global authority, insisting that the 'true and solid peace of nations' can rest 'on mutual trust alone,' not on equality of weapons or fear. (Cahill 2001, 81)

In the encyclical, he urges, given the lethality of the nuclear weapons, that the world community ban nuclear weapons. He explains in section 112 of *Pacem in Terris* that nuclear weapons should not be considered a viable option for people of reason, this as demanded by justice, right reason and humanity. While never mentioning just war theory directly, he does discuss the destructive capability of weapons of mass destruction with their indiscriminate and disproportionate slaughter of noncombatants that would result from the use of this weaponry. Therefore, indirectly addressing the criteria of discrimination and proportionality, he doubts whether the use of nuclear weapons could ever meet the moral requirements of just war.

Calling for the use of negotiation, not force, to settle disputes between nation-states, Pope John XXIII looks to an international forum such as that of the United Nations to carry out this critical mandate:

> The United Nations organization has the special aim of maintaining and strengthening peace between nations, and of encouraging and assisting friendly relations between them based on the principles of equality, mutual respect and existing cooperation in every field of human endeavor (John XXIII 23, 32). While *Pacem in Terris* does allow for a nation-state's defense and supports a state's rights to safeguard the rights of all, it does warn against the dangers of arms races and weapons of mass destruction. (John XXIII, 10)

Pope Paul VI: (1897-1978; Pontiff 1963-1978)

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Like many of his predecessors, Giovanni Battista Montini spent many years preparing for the papacy in the Vatican Secretariat of State. Serving as Undersecretary of State from 1937 to 1954, Montini was integrally involved in the Vatican's affairs of state during and after World War II. After the war, he facilitated relief services that assisted millions of victims of war. In 1954, he was appointed Archbishop of Milan, and in 1958 he was rewarded for his service to the church with his papal appointment to the College of Cardinals. Most importantly, Cardinal Montini was personally entrusted with planning and organizing one of the most significant events in modern church history: the Second Vatican Council (1962-1965). Once elected Pope, he would ultimately be responsible for implementing many of the doctrinal and organizational changes agreed to at the Council. As such, he was a key participant in one of the most exciting, yet tumultuous eras in modern church history.

In his encyclical *Populorum Progressio* (The Progress of Peoples), March 26, 1967, Pope Paul VI followed the tradition of his predecessors and linked peace, not only with the absence of war, but also with social justice that must be afforded to all peoples to ensure a meaningful quality of life. Calling into question the large percentage of many nations' budgets allocated for defense expenditures both in the East and the West, the pope suggested cutting military expenditures so that resources could be used to feed, clothe, house, and care for the poor (Gremillion 1976, 403). He explained that excessive military expenditures deflected resources (403) from social programs and directed them into weapons production arms (Ibid.). Thus, the true progress of people is thwarted. Paul believed that true human progress would eventually equate to a peaceful society and peaceful world.

Populorum Progressio "represents a notable advance on earlier church documents. It analyses the global situation and sets out to understand why there is such an imbalance between rich and poor countries" (Dorr 1983, 139). Paul VI calls for change in dealing with the economic inequity resulting from the eras of colonialism and neocolonialism. There is an urgency in the tone of the encyclical, one that begs for an immediate and decisive response:

> We want to be clearly understood on this point: The present state of affairs must be confronted boldly, and its concomitant injustices must be challenged and overcome. Continuing development calls for bold innovations that will work profound changes. The critical state of affairs must be corrected for the better without delay. (Paul VI 1967, 32)

So, if injustices are to be overcome in a peaceful way, the pope pleads that bold transformations take place that will rebuild the present state of affairs.

The Pope's comments question whether revolution is ever justified. He asks who is responsible for bringing about the changes he has called for. He is especially critical of those responsible for the unjust situation who continue to thrive in a position of superiority, both politically and economically. The Pope also offers insight on his position regarding revolution:

> Everyone knows, however, that revolutionary uprisings--except where there is manifest, longstanding tyranny which would do great damage to fundamental personal rights and dangerous harm to the common good of the country-- engender new injustices, introduce new inequities and bring new disasters. The evil situation that exists, and it surely is evil, may not be dealt with in such a way that an even worse situation results. (Paul VI 1967, 31)

Thus, fighting injustice through revolutionary methods may produce even greater suffering and injustice. He does, however, state that injustices must be fought against and

overcome, for evils must not be endured without resistance. Donald Dorr, in commenting

on the nebulous nature of his suggestions, states that Paul VI left this passage vague,

deliberately:

> Paul VI faces up to the question of the possibility of justified revolution, a
> question that had been shelved by Vatican II. Apparently he recognized that, in
> spite of the very strong arguments against revolution, it would be flying in the
> face of a strong Catholic tradition to rule it out entirely. (1983, 140)

So, according to Dorr, Paul VI leaves open the possibility for justified revolution,

a suggestion that some within the ranks of liberation theology would take very seriously.

Pope John Paul II: (1920 - Present; Pontiff: 1978 – Present)

Pope John Paul I died unexpectedly September 28, 1978, after just thirty-four

days in office. On October 16, 1978, the second day of the papal conclave, John Paul II

was elected Supreme Pontiff of the Roman Catholic Church. Since his election, he has

become one of the most popular, extensively published, and widely-traveled popes in

history. His profound influence in the field of international relations has led to his being

viewed as one of the most important moral leaders in the world today. Therefore, his

opinions on justice, peace, war, and weapons (whether in their possession or threatened

use) weigh heavily with leaders of the world community and in the politics of

international organizations like the United Nations.

Karol Cardinal Wojtyla of Krakow in Poland did not follow the same "career

path" as many of his predecessors in the papacy. To begin, he is the first non-Italian pope

since 1523; next, rather than spending most of his ministry in the Vatican Secretariat of State, he served as both pastor and professor; in fact, he served most of his ministry as priest, bishop, and cardinal under communist rule in his home diocese of Krakow, Poland.

After the German defeat and subsequent occupation of Poland in September 1939, Karol Wojtyla became a common laborer, first in a stone quarry and then in a chemical plant. In 1942 he entered an underground seminary and began theological studies in preparation for the priesthood. After the war he studied in Rome and earned advanced degrees in theology and philosophy. In 1958 he was named an auxiliary bishop and in 1964, he was installed as Archbishop of Krakow.

Bishop and then Archbishop Wojtyla, who attended all four sessions of the Second Vatican Council, was instrumental in the drafting of one of the most important documents, *Gaudiem et Spes*, the Pastoral Constitution on the Church in the Modern World (Bunson 1999, 246). For our focus, it is important to note that most of the Council topics related to modern war and just war theory were given their most comprehensive coverage in *Gaudiem et Spes*.

After *Pacem in Terris*, the Conciliar documents of Vatican II, and the protests of the Vietnam War period, pacifism grew in popularity within the Roman Catholic Church. Popular religious figures like Thomas Merton and Daniel Berrigan, who became anti-war icons, saw their ideas and pacifistic leanings gaining steady popularity, especially in the American church. Around that time, more and more Catholics began to question the morality of using or possessing nuclear weapons. Pope John XXIII in *Pacem in Terris* (1963) and Pope Paul VI in *Populorum Progressio* (1967) reiterated the idea that peace is

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more than the absence of war; it is a condition that fosters justice and peace through the progress and development of people. As one scholar explains:

> Since the Second Vatican Council in the 1960s, Catholic teaching has increasingly put international affairs in the context of a universal or global common good, to which the actions of nations must be accountable. Under popes John XXIII, Paul VI, and John Paul II the pacifist option has gained respect, and the possibility of justifying war has grown more remote. Important factors have been the danger of nuclear weapons, the realization that mere preparation for war creates economic and social injustices, [with] the destruction by war of the social conditions of peace. Almost inevitably, war confirms entrenched hatreds and results in the unjust and destabilizing dominance of the victors over the losers. (Cahill 2001, 80)

The American Bishops joined the dialogue with their now famous pastoral letter, *The Challenge of Peace: God's Promise and our Response* (1983).

Since his elevation to the papacy, "Pope John Paul II has attempted to restore confidence in the *Magisterium* [teaching authority of the church] by presenting a clear, steady, and united teaching" (Reese 1999, 1). With the help of strong subordinates in the Roman Curia, such as Cardinal Ratzinger, he has succeeded in presenting an unambiguous position on subjects like birth control, abortion, and the role of celibacy for those called to holy orders. Perhaps this pope has not given the same clarity of opinion to matters of peace and war, especially the just war tradition. Some of his statements appear to be contradictory, as the same person who stated publicly, "War has never been and never will be an appropriate way to solve problems between nations" [Comments made December, 20th, 1998, on the United States and British bombing campaign against Iraq] also made the statement, "I am not a pacifist" (Christiansen 1999, 1-2).

One of the most influential theological journals in Rome, often called the "unofficial mouthpiece" of the Vatican, is the Jesuit journal, *Civilta' Cattolica*. This

journal published an editorial in 1991 suggesting that the theory of the just war is untenable and needs to be abandoned. This editorial said, in part, that "the theory of just war had never reached the level of official Catholic teaching" (Christiansen 1999, 2). Was the editorial a reaction to American attempts to "justify" military intervention in Kuwait (1991), or was it a reflection on the Vatican's position on the utility of the just war theory? On the other hand, one of the watershed events in the pontificate of John Paul II was the publication of the most recent version of *The Catechism of the Catholic Church* (1992). There readers can find the just war theory included as an integral part of Catholic teachings (USCC 1994, 555). Since the Catechism was developed in the papacy of John Paul II and since he enthusiastically released the Catechism with the Apostolic Constitution, *Fidei Depositum*, it is safe to assume that the teachings contained in this 1992 edition of the Catechism reflect the sentiments and beliefs of John Paul II.

Under the title of "Safeguarding Peace," the church reiterates the teaching of the modern pontiffs: "Respect for and development of human life require peace. Peace is not merely the absence of war and is not limited to a balance of powers between adversaries.... Peace is the 'tranquility of order'. Peace is the work of justice and the effect of charity" (USCC 1994, 554). The Catechism then presents a segment on "Avoiding War." In this section, the church insists that its believers pray and act "...that the divine Goodness may free us from the ancient bondage to war" (Catholic Catechism, 555).

The Catechism goes on to acknowledge that "the danger of war persists" and that since no international authority possesses the competence or power to stop wars, it recognizes, in almost a direct reference to Article 51 of the United Nations' Charter, that

governments must possess the right to declare and wage wars. After defining legitimate defense, the Catechism presents the traditional *jus ad bellum* and *jus in bello* elements of the just war theory. In #2310 it emphatically states, "Public authorities ... have the right and duty to impose on citizens *the obligations necessary for national defense*" (Catholic Catechism 1994, 556). Further, it depicts members of the armed forces, if they carry out their duties in an honorable way, as true "...servants of the security and freedom of nations," describing them as "...contributors to the common good of the nation and the maintenance of peace" (Ibid.). When war is just, belligerents must still adhere to the "moral law" in the conduct of the hostilities. Indiscriminate targeting of population centers and the use of weapons of mass destruction (nuclear, biological, or chemical) are described as "crimes against God and man," reflecting the teachings of the modern pontiffs since Benedict XV. Finally, believers are reminded that the arms race is one of the human race's greatest curses. Besides fostering the obvious proliferation of weapons, the arms race inflicts harm on the poor since in any arms race money that might be targeted for human development is spent on weapons of destruction (Catholic Catechism 1994, 557).

So what is the position of the current pope on just war? He gives us a hint as to his initial position (at the beginning of his papacy) in a talk given to UNESCO in 1980:

> Peace is not utopia, nor an inaccessible ideal, nor an unrealizable dream. War is not an inevitable calamity. Peace is possible. And because it is possible, peace is our duty: our grave duty, our supreme responsibility. Certainly peace is difficult; certainly it demands much good will, wisdom, and tenacity. But man can and ... must make the force of reason prevail over the reasons of force. (John Paul II 1980, 9).

In brief, John Paul presents himself as an optimistic realist who truly believes that the goal of peace is attainable in our time. Judging by the presentation of just war theories within the Catholic Catechism, the Pope would agree with his predecessors who view using force as only justified as a last resort, after all other avenues of negotiation and statecraft are exhausted. The current pontiff, who is deeply troubled by the arms race and by development of weapons of mass destruction, suggests that the proliferation of arms is a curse impeding the true progress of peoples.

George Weigel, Senior Fellow at the Ethics and Public Policy Center in Washington and the author of an internationally best-selling biography on John Paul II, *Witness to Hope: The Biography of Pope John Paul II*, reminds readers that "... despite his profound impact on contemporary history, John Paul is not a diplomat, politician, or international relations specialist. Rather, the focus of this powerfully influential figure is that of a pastor, evangelist, and promoter of human rights" (Weigel 2000, 1). According to Weigel, the Pope's experiences in Poland made him a firm believer in a "culture first" strategy. He believed that an informed, educated Catholic laity, as well as a civil society built on a Catholic intellectual movement, would have a greater chance of toppling a communist regime than would an underground resistance movement. Weigel comments: "By restoring to the Polish people their authentic history and culture, John Paul created a revolution of conscience that ... later produced the nonviolent Solidarity resistance movement, a unique hybrid of workers and intellectuals – a 'forest planted by aroused consciences'" (Weigel 2000, 3). This culture-first strategy resulted in the Polish Revolution of 1989, which defeated the communist regime that had ruled in Poland since the end of World War II and led to the eventual collapse of the U.S.S.R.

On the other hand, Weigel does not give Pope John Paul II high grades for furthering or developing just war principles:

> Still, the present pontificate has left some gaps in our understanding that urgently need filling in the years ahead. It is curious that this son of a soldier, who has expressed his respect for the military vocation on many occasions, has not developed the church's just war doctrine. This was most evident during the Gulf War [1991], but beyond such relatively conventional conflicts, there are new issues today at the intersection of ethics and world politics--the problem of outlaw states, the morality of preemption in the face of weapons of mass destruction, the locus of 'legitimate authority' in the international community—that the Pope has simply not addressed, and others must. (Weigel 2000, 4)

According to Drew Christiansen, Pope John Paul II believes that communism in the Soviet Union and Eastern Europe was ended through nonviolent means. In 1991, the Pope, reflecting on the fall of the Iron Curtain, wrote that he did not agree with those who stated that the only way to defeat the communist regimes in Eastern Europe was with force:

> It seemed that the European order resulting from the Second World War and sanctioned by the Yalta Agreement could only be overturned by another war. Instead it has been overcome by the nonviolent commitment of people who, while always refusing to yield to the force of power, succeeded time after time in finding effective ways of bearing witness to the truth. (Christiansen 1999, 2-3)

In his encyclical *Evangelium Vitae* [The Gospel of Life] (1995), John Paul II lauds the courage of those who would suffer for the sake of Christian justice and criticizes nations that resort to the use of force to resolve differences. He calls war part of the structure of sin and a sign that a culture of death is pervasive in the modern world. He suggested that "nonviolent means" are a better way to counter aggression and injustice. In his encyclical *Centesimus Annus* (100th Anniversary) (May 1, 1991), John Paul II restates

the position of his predecessors, calling the Persian Gulf War a tragedy, and suggested

that the time had come to seriously consider alternatives to war:

> Pope Benedict XV and his Successors clearly understood [the dangers of war]. I myself, on the occasion of the recent tragic war in the Persian Gulf, repeated the cry: 'Never again war!' No, war never again, which destroys the lives of innocent people, teaches how to kill, throws into upheaval even the lives of those who do the killing and leave behind a trail of resentment and hatred, thus making it all the more difficult to find a just solution to the very problems which provoked the war. Just as the time has finally come when in individual states a system of private vendetta and reprisal has given way to the rule of war, so too, a similar step forward is now urgently needed in the international community. Furthermore, it must not be forgotten that at the root of war there are usually real and serious grievances: injustices suffered, legitimate aspirations frustrated, poverty, and the exploitation of multitudes of desperate people who see no real possibility of improving their lot by peaceful means. (John Paul II 1991, #52)

On the other hand, it was this same pontiff who called for humanitarian

intervention throughout the mid-decade of the '90s, suggesting that interventions in

places like Somalia, Rwanda, and possibly the Balkans might not only be justified, but

also potentially morally obligatory for the nations of the world. In fact, the writings,

teachings, pronouncements, and opinions of Pope John Paul II seem to display the same

tension between Christian pacifism and realism that has existed since the early days of

the church. If "the just-war tradition is a way of thinking rooted in Christian moral

realism" (Weigel 2001, 2), then John Paul II continues to be an idealist thinker with

realist tendencies. He is in fact a Christian optimist who continues to hope and pray for

peace, while holding out the option that force might be a viable and just option given the

uncertainties and sin of the world, a world divided by sovereign interests and the sins of

those who place little value on life.

This writer had the unique opportunity to celebrate a private Mass with Pope John

Paul II and then to meet him at a short, private audience. While vested for concelebration

of the Mass, I attended the audience in the uniform of a United States Marine, a right

afforded Navy Chaplains serving with Marines. After an exchange of gifts, the Pope

offered a remark that could only come from the lips of an idealist living within the

tensions of the real world. He remarked, "Father, please pray for peace, and know that I

support your ministry in the military chaplaincy of the United States."

The Second Vatican Council (1962-1965)

The Roman Catholic Church holds to what is called a *conciliar theology*. "An

ecumenical council is an assembly of the college of bishops, with and under the

presidency of the pope, who has supreme authority over the church in matters pertaining

to faith, morals, worship, and discipline" (Bunson 2001, 244). There have been twenty-

one ecumenical councils in the history of the Roman Catholic Church, the last being held

October 11, 1962 to December 8, 1965.

Of this Council's principal documents (16 in all), two are most critical to a

contemporary understanding of the church's view on war and, in particular, the just war

theory. These documents are the Council's *Dogmatic Constitution on the Church (Lumen

Gentium:* Light of the World) and the *Pastoral Constitution on the Church in the Modern

World (Gaudium et Spes:* Joy and Hope). The Pastoral Constitution on the church

explains the relation of the church to the modern world:

> In Part I, the church develops her teaching on man, the world he inhabits, and her
> relationship to him. Part II treats at length ... various aspects of life today and
> human society and in particular deals with those questions and problems which
> seem to have a greater urgency in our day. (Flannery 1984, 903)

In her conciliar theology, the Catholic Church teaches that the Holy Spirit inspires Council delegates. Then, when decrees or dogmatic constitutions are confirmed, signed, and promulgated by the pope, these documents help define the truths of revelation, mold forms of worship, and establish church discipline.

Gaudiem et Spes treats just war theory in its fifth chapter: *The Fostering of Peace and Establishment of a Community of Nations.* According to a principal scholar on this council: "Speaking to the 20th century generations that have known and suffered from the ravages of war, this chapter reminds readers that the establishment of a 'truly human world' is not possible unless ... everyone devotes himself to the cause of true peace with renewed vigor ..." (Flannery 1984, 986). In quoting Benedict XV and John XXIII, the Council reminds the world that peace is more than the absence of war. As taught by the Prophet Isaiah (32:17), peace is the "effect of righteousness" or the result of the right ordering of things. The right ordering of things in contemporary political language might equate to *justice for all.*

The Council Fathers remind believers that human nature is weak and consequently "peace will never be achieved once and for all, but must be built up continually" (Flannery, 987). Since we live in the constant threat of war, we must pray that the promise of Isaiah will come to light, leading nations to beat their swords into plowshares and their spears into pruning hooks (Isaiah 2: 4). Christians believe that this condition of world peace will finally be realized at the Second Coming of Jesus Christ, at his *parousia.*

Reversing the viewpoint of Pope Pius XII on conscientious objection, the Second Vatican Council stated, "The rationality of war, given nuclear weapons, comes under great scrutiny; in ... *Gaudiem et Spes* (1965) the church acknowledges the right of conscientious objection" (Burke 2001, 54). Catholics can object to war and refuse to fight in war, using their religious beliefs to object conscientiously to military conscription and service.

With these points as background, the Council urges nations to arbitrate differences instead of resorting to the use of force, asking them to rely more on international organizations and agreements that help facilitate dialogue in order to avoid war and bloodshed (*Gaudiem et Spes, 79*). Some view these teachings as the church's official adoption of internationalism and its support for a new world order wherein the collective will of the world community would outweigh the individual agendas or national sovereignty among countries of the world. In line with the just war tradition, the Council documents upheld the right of nations to defend themselves against aggression while stressing the interdependence of those very nations. These texts highlighted the dangers wrought by the development of lethal weapons that fail to discriminate between combatants and noncombatants, thus violating the principles upon which the theory rests. In giving this direction, the Council Fathers indirectly reaffirmed just war theory as official teaching of the Roman Church.

The Council follows the lead of Pius XII, John XXIII, and Paul VI in condemning the concept of total war. Further, the Council condemns the use of weapons of mass destruction, calling their use "a crime against God and man" for their potential disproportional and indiscriminate destruction of population centers. Asking humanity to

re-evaluate war, the Second Vatican Council asks for new attitudes and approaches given the destructive capabilities of modern weaponry, which has the potential to wipe out the human race (Dwyer 1987, 1094). This Council also challenges the arms race of the Cold War era while questioning deterrence as a genuine path to peace:

> Although Vatican II reiterated the principles of the Just War Theory, it also said [that] we must develop a new attitude toward war. The modern world presents some new developments; there are at least four developments that require new thinking.... First, the development of new scientific weapons which are capable of mass destruction; second, the exaggerated role of nation states in an age of global interdependence; third, the tremendous outlay of expenditures on military spending when the tasks of development for humane purposes is such a pressing need; [and] fourth, the prospects for nonviolent resistance [to address] injustice. (Hittinger 2000, 12)

These, then, are the most significant contributions of the Second Vatican Council to the development of just war theory. While the Council does not explicitly use a lot of just war terminology or refer directly to the theory, "the logic of that construct [just war] clearly underlies its teaching" (Dwyer 1987, 1094). In short, the Council Fathers were content to reaffirm, through their spirit if not through direct reference, the relevance of just war principles.

The American Catholic Bishops

One of the most important landmarks of the Second Vatican Council was its emphasis on the principle of *collegiality*. This term describes the authority exercised by the College of Bishops, the assembly of bishops from around the world. According to Roman Catholic teaching, these successors of the apostles exercise an important role as

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the church's teachers. Thus, with the Pope, bishops share authority in the teaching role or *magisterium* of the universal church.

With this principle in mind, the National Conference of Catholic Bishops was founded November 14, 1966. The conference is described as "...a strictly ecclesiastical body with defined juridical authority over the church in this [the United States] country" (Bunson 1999, 444). For centuries, the American bishops have issued pastoral statements on numerous topics. None has received more attention, acclaim, and scorn than their 1983 pastoral statement on war and peace entitled: *The Challenge of Peace: God's Promise and Our Response.*

In this pastoral letter, the Catholic episcopacy challenged fellow Americans to redefine just war theory in light of the Cold War. This redefinition had to take into account the special challenge brought on by nuclear deterrence, the threat of thermo-nuclear conflagration, and other evils posed by these weapons of mass destruction. The bishops begin their statement by describing the state of humanity at "... a moment of supreme crisis in its advance toward maturity. ... The crisis of which we speak arises from this fact: nuclear war threatens the existence of our planet; this is a more menacing threat than any the world has known. It is neither tolerable nor necessary that human beings live under this threat" (NCCB 1983, 1). The pastoral letter reminded the American people that the United States was the first nation to produce and use nuclear weapons. As such, America has the "... grave, human, moral and political responsibilities to see that a 'conscious choice' is made to save humanity" (NCCB 1983, 2).

The bishops reminded their flock, as well as anyone who would heed their challenge, that Catholic teaching on war, such as the just war theory or their own

pastoral, has two distinct purposes: first, to help the faithful "to form their consciences," and second, "to contribute to the public policy debate" concerning issues of war and peace. The bishops mention "a developed theology of peace," which may help America build a just and lasting peace in the world, by proposing alternatives to force in disagreements between nations. Equating peace to the building of the Kingdom of God, the bishops promote an eschatological or final peace that will last for eternity. They mention with candor and honesty that the Christian scriptures "... do not provide us with detailed answers to the specifics of the questions which we face today [nuclear war and deterrence]. ... They do, however, provide us with urgent direction when we look at today's concrete realities" (NCCB 1983, 11).

In outlining the basic tenets of just war theory, the U.S. bishops state that the theory must always begin with a "presumption against war." Implying that future war would probably include or at least threaten the use of nuclear weaponry, the bishops question whether any offensive war could be morally justifiable. As seen earlier, James Turner Johnson challenges both of these positions. First, he criticizes the fact that the bishops ignored the potential for future types of armed conflict that might not include nuclear weapons. Second, as noted, he labels the bishops "crypto-pacifists" for approaching the theory with these blinders in place. Johnson replies:

> What, then, of the claim made in *The Challenge of Peace* that just war doctrine begins with a 'presumption against war'? It is certainly true that such a presumption seems to appear in much recent Catholic thought on war, including a variety of papal statements. Nonetheless, such a presumption is not to be found in just war tradition in its classic form, or even in the specifically churchly theorists Augustine and Aquinas to whom Catholic just war theorists generally refer for authority. The idea of such 'a presumption' seems to owe more to the influence of Catholic pacifists on the development of *The Challenge of Peace* and to a general uneasiness with the destructiveness of modern war and the venality of modern states than to the heritage of just war tradition. I would say emphatically: the

concept of just war does not begin with a 'presumption against war' focused on the harm which war may do, but with a presumption against *injustice* focused on the need for responsible use of force in response to wrongdoing. (Johnson 1999, 35)

Thus, both the Second Vatican Council (1962-65) and the American bishops in *The Challenge of Peace* (1983) called for an end to war, a stop to the production of weapons of mass destruction, and the inauguration of an era of greater international cooperation in the prevention of war. One sees in the document the same tensions that were present in the post-apostolic church: the classic tension between pacifism and realism. The document elevates Christian pacifism to a level reminiscent of the early Christian church. It recognizes:

> The Catholic tradition on war and peace is a long and complex one, reaching from the Sermon on the Mount to the statements of Pope John Paul II. Its development cannot be sketched in a straight line and it seldom gives a simple answer to complex questions. It speaks with many voices and has produced multiple forms of religious witness. (NCCB 1983, #7)

Knowledgeable persons affirm that those who drafted the original 1983 text represented both sides of the ideological Catholic perspective on war and peace. Primary drafters included Bishop Thomas Gumbleton, an assistant bishop in Detroit, who at the time headed a Roman Catholic pacifist group called *Pax Christi*, and Bishop (later Cardinal) John O'Connor, former Navy Chaplain-Admiral and one-time defender of America's role in the Vietnam War. As a result, this first draft of the bishops' pastoral letter represents a sort of middle-of-the-road approach to war, peace, and nuclear deterrence. The final version was supposedly drafted by two moderates, Archbishop Joseph Bernardin and Father J. Bryan Hehir. As hoped, this pastoral succeeded in

bringing the concept of nuclear deterrence to a public debate. Many politicians, religious leaders, and Christian faith groups responded in time with their own instructions on this important topic.

Ten years after the release of *The Challenge of Peace* ..., the American bishops released their second pastoral letter on war and peace: *The Harvest of Justice is Sown in Peace* (November 17, 1993), just two years after the collapse of the Soviet Union. This second United States pastoral letter on war and peace is much softer in tone regarding the potential use of force in international relations. It states emphatically that force must be considered in certain situations regarding *blatant aggression and injustice.* In this document, the bishops warn against the dangers of isolationism while upholding the morality of using force to secure human rights and human development.

Although the document begins, as does *The Challenge of Peace*, with a presumption against the use of force, the bishops recognize "the dangerous temptation to turn inward" in isolationism and "to ignore global responsibilities." In fact, they mention situations where it may be *immoral* not to consider the use of force, "In a world where 40,000 children die every day from hunger and its consequences; where ethnic cleansing and systematic rape are used as weapons of war; and where people are still denied life, dignity, and fundamental rights, we cannot remain silent or indifferent" (NCCB 1993, 4). Then, in a separate section on humanitarian intervention, section thirteen, they quote Pope John Paul II and refer to the use of force as a potential moral duty. This is certainly a different tone than the one set in *The Challenge of Peace:*

> The internal chaos, repression, and widespread loss of life in countries such as Haiti, Bosnia, Liberia, Iraq, Somalia, Sudan, and now Burundi have all raised the difficult moral, political and legal questions that surround these calls to intervene

in the affairs of sovereign states to protect human life and basic human rights. Pope John Paul II, citing 'the conscience of humanity and international humanitarian law,' has been outspoken in urging that 'humanitarian intervention be obligatory where the survival of populations and entire ethnic groups is seriously compromised. This is a duty for nations and the international community. ... [In situations where] populations are succumbing to the attacks of an unjust aggressor, states no longer have a 'right to indifference.' It seems [that] their duty is to disarm this aggressor, if all other means proved ineffective. The principles of the sovereignty of states and of non-interference in their internal affairs--which retain all their value--cannot constitute a screen behind which torture and murder may be carried out.' (NCCB 1993, 11)

The bishops ask that institutions, structures, and laws be created or supported which contribute to the building of world peace. They recognize that the use of force is sometimes necessary to address wrongs and build a peace. Nevertheless the bishops warn that the use of force is not always the best way to address problems in the international arena: "Nor can we simply turn to military force to solve the world's problems or to right every wrong" (NCCB 5). They acknowledge that there are situations where the use of force might just be the most appropriate and potentially moral decision. Once again, the bishops reflect the polarity of Christian thought in its discussion of questions concerning war and peace. They display the historical tension between the Christian schools of pacifism and realism. In doing so, they present both poles of realism and pacifism as integral components of Roman Catholic teaching in the just war tradition (NCCB 1993, 7).

Conclusion

These contemporary authors highlight the major issues and concepts within the contemporary just war debate. Some of these major trends and developing lines of thought include: (1) whether or not the emphasis for just use of force should be placed on a presumption against war or a presumption against injustice; (2) whether discrimination

is an absolute rule, or whether the principle might be conditioned by an extreme emergency as suggested by Michael Walzer; (3) whether weapons of mass destruction, and especially nuclear weapons, could or could not be used in any situation in a proportionate and discriminate way; and (4) whether tensions exist between the theoretical approach to just war theory (rooted in morality and theology) and the practical approach to the theory (as rooted in the experience of warriors and politicians who work within the realm of political-social realism).

CHAPTER FOUR

THE COMPONENTS OF JUST WAR

We want no war of conquest. War should never be entered upon until every agency of peace has failed. ---William McKinley

Humanity has long pondered the morality of warfare and the ethical conduct of combatants in war. Moral persons, who hold to the ethical and religious principle that killing is wrong, label the unjustified taking of another human life as *murder*. While most hold to the principle that killing is indeed wrong, the question must be asked whether killing is ever justified. Further, are there situations or conditions in which killing is required as a moral obligation? And, if killing is ever acceptable, what moral limits must be placed on this act to ensure those actions remain justified throughout the conflict? Civilized persons, recognizing the tragic nature of war and the various dictums prohibiting killing, question not only whether war is just, but, whether it is avoidable.

From ancient times, philosophers, theologians, lawyers, political leaders, and warriors have debated the nature of warfare, trying to answer the question: What constitutes a just war? Many have formulated concepts defining the ethical boundaries of both the justified use of force (*jus ad bellum*) and the ethical behavior formulated for those who fight in wars (*jus in bello*). The work of countless people is now reflected in international laws, treaties, and agreements. It is found in the rules and conventions regulating the conduct of states, in ecclesiastical pronouncements and the scriptures of most major religions, and in a body of philosophical thought labeled Just War Theory:

> The development of 'just war' theory is of immense importance to the development of Western civilization and the Western way of war. Theoretically at least, the tradition placed war under the domination of conscience and in doing so

established the precept that 'right' was more important than 'might.' Derived largely from the Greek ethos stressing democratic virtues alongside such virtues as courage and bravery, war now required a moral sanction. Moreover, war required the imprimatur of state authority and was to be carried out by professionals. (Johnson 2001, 5)

Just war theory is ethical reflection on when it is morally justifiable to declare war and, once begun, what conditions must be met to ensure that the use of force remains moral. According to James Turner Johnson, one of the tradition's most prominent scholars, just war theory is:

...a body of moral wisdom deeply and broadly rooted in Western ideals, institutions, and experiences. Developed over history as a result of contributions from both secular and religious sources, [it reflects] the practice of statecraft and war as well as moral and political theory... . (Johnson 1999, 23)

When Saint Augustine wrestled with the concept of just war, he was not merely concerned with developing a Christian justification for war. He was just as concerned that those initiating war should proceed, ironic as this motive may appear, out of Christian love. Further, as a pastor and a survivor of war, he was concerned with how war affected people.

For most faith groups, just war theory provides guidance with respect to the use of potentially deadly force and helps define the ethical parameters of the behavior of warriors who must use that force. In essence, for Judeo-Christian adherents and others, the theory thus affirms the sanctity of human life and the dignity of human persons. Governments and citizens must ask whether their decision to use force is in fact a lesser evil than allowing aggression, injustice, or man's inhumanity to man to go unchallenged, unchecked, or unpunished.

JUST WAR THEORY: A CONTEMPORARY MODEL

Two potential approaches to this study are a *general theory*, and a *specific theory*.
Those who prefer to approach the just war theory as a general theory interpret the criteria
for the just use of force and just behavior in war as written in a broad philosophical way.
The criteria of the theory are intended to give general direction and not to pinpoint
specific guidelines to justify war or decide just behavior in war. Formal theorists, who
allow for discussion and debate on each principle articulated in the theory, view the
criteria as parameters for provocative and honest just war discussion, not dogmatic rules
governing those employing the theory of just war.

Other scholars approach just war theory in a more legalized, *specific* way. They
view the precepts and criteria of just war theory as precise guidelines, rules, or criteria
articulated precisely with little room for interpretation. It is important to note that,
however one approaches the just war question, the theory should never be used as an
immovable set of standards or as a mere checklist referred to before resorting to force.
The just war theory is dynamic, continuing to evolve and develop along with humanity's
understanding of war: "Just war doctrine is not definitively established, but rather [it] is
something that is historically conditioned and that remains in transition" (Daly 2001, 2).
The American Catholic bishops offer a concise and precise definition of just war theory
and tradition:

> ...It consists of a body of ethical reflection on the justifiable use of force. In the
> interest of overcoming injustice, reducing violence, and preventing its expansion,
> the tradition aims at: (a) clarifying when force may be used; (b) limiting the resort
> to force; and (c) restraining damage done by military forces during war. (USCCB
> 1993, 2)

This chapter presents a representative version of the basic components, criteria,
and contemporary understanding of this ever-evolving tradition. It is presented to readers

as a working theory. It analyzes the two main categories of just war discussion: whether

going to war is morally justified (*jus ad bellum*) and what constitutes morally permissible

behavior, or just means, for those who fight in war (*jus in bello*), as well as the

subsequent criteria of each category. The analysis presented in this chapter is not

intended to be an exhaustive treatment of contemporary just war theory; it is offered

merely as an introduction to a theory that ultimately affects, in critical ways, all those

called to the "noble profession of arms."

Jus ad Bellum: The Justice of Going to War

The first category of just war theory addresses the question: What are the morally

defensible criteria for declaring and going to war? Proponents of the just war theory hold

that a declaration of war is just if it meets certain standards or criteria. These criteria,

which have evolved through the ages, outline specific conditions that should be

considered before any war is declared.

Just Cause

The first criterion for just war is that the cause for war be just. This requirement,

in effect, asks: "What is just, or what constitutes justice?" It is therefore important to

begin by defining justice so as to comprehend what is just. According to one scholar,

justice is: "the principle of moral rightness" (Costello 2000, 738), but the concept is even

more complicated than Costello's paraphrase:

> What is justice? Though Americans find it hard to agree on specific definitions, we have a general sense of what constitutes justice. It is the impartial distribution of rewards and punishments; justice is 'equal opportunity' and 'fair treatment.' It is, as Aquinas affirmed, 'rendering to each one his right.' Like 'life' and 'liberty,' justice is a fundamental principle of the nation. (Davidson 2000, 1-2)

Given this ideological foundation, a just cause for war may include the violation of rights (whether individual, societal, or national). Nations that have had their sovereignty unjustly violated or their citizens harmed, such as those victimized by the aggression of other nations, may have just cause to use force and defend themselves against further wrongs. Nations may have just cause to use force in order to restore rights or justice wrongfully denied to them by aggressor nations. Further, just cause may exist if a nation is forced to resort to war to re-establish order and restore peace.

The most commonly accepted causes for the just declaration and waging of war are: (a) defense against attack; (b) the reclamation of something (like territory) that was wrongfully taken; (c) the defense of peace; and, (d) redressing evil or aggression (e.g., evicting an aggressor). Although these reasons have long been held as *just causes* for war, some theorists in the 20th century, such as the modern popes and the American Catholic bishops, have tried to narrow just cause to merely defensive actions, actions taken to redress aggression. These authors claim that war can only be justified in self-defense or in the defense of others. They hold wars conducted for national gain or glory, for territorial expansion, to avenge past wrongs, or for any non-defensive purpose to be unjustified.

When George H. W. Bush, the 41st U.S. president, approved plans for the 1990 invasion of Panama, he gave the military operation the name: *Just Cause*. This military contingency was not named *Just Cause* by accident. The President of the United States

wanted the world to know that America's motives for using force against Panama were moral, and that her reasons for resorting to military action in Panama were just. The President of the United States wanted to convince both his fellow citizens and the world at large that the United States was resorting to the use of force to undo the injustices of the Noriega regime. The stated goal of this military action was to restore order to Panamanian society that had been denied it, unjustly and illegally, by the dictator-president, Manuel Noriega.

More recently, the Pentagon debated whether the current war on terrorism should be called *Infinite Justice*. This title, once again, indicates the resolve of America's leadership to operate within the boundaries and norms of just war principles. Critics might reply that the purpose was to define just war principles to meet the needs of U.S. agenda by ascribing to military operations the attributes of a just cause. The ultimate goal was to convince the community of nation-states that America's use of force was indeed justified, because her motives and goals were just; some might consider this nothing more than a public relations ploy.

Regarding just cause for intervention, many 20th century just war theorists, such as Pope Pius XII and the German Catholic bishops, had dismissed the aggressive use of force, e.g., force that violates the sovereignty of another country, as not meeting the standards of just cause for war. Since the episodes of ethnic cleansing in Bosnia, the Iraqi invasion of Kuwait, and the genocide of Rwanda, a number of theorists have broadened their understanding of just cause to include the concept of just intervention. Such actions include stopping aggression, checking injustice, reducing violence, halting genocide, preventing hegemonic expansion, or ensuring the integrity and security of national

borders (national defense). These reasons and purely humanitarian ones are now viewed

as potentially justifiable causes:

> Nations may also have humanitarian reasons for intervening militarily in the
> internal affairs and civil wars of other nations. Foreign governments may be
> totalitarian or authoritarian, oppressing ethnic or religious minorities, or even
> practicing genocide. Or foreign revolutionaries may be seeking to impose a
> totalitarian regime. Or foreign nations may be sinking or have already sunk into a
> state of anarchy. Such humanitarian reasons have ... traditionally *not* been
> considered just causes for outside nations or the world community to intervene
> militarily, although they would in the case of actual or impending anarchy if the
> nominal government invited outside nations to do so. But world opinion is
> changing in this regard, and humanitarian reasons are prima facie causes for
> intervention. Whether or not it is proportionately just for outside nations or the
> world community to intervene militarily is another question. (Regan 1996, 69)

Some theorists, such as the Catholic hierarchy, continue to define as morally

justifiable only *defensible* actions taken for national defense or to protect the defenseless.

Other theorists, however, such as James Turner Johnson and Michael Walzer, have

broadened the just cause parameters to include more aggressive actions, even those

violating the principle of sovereignty.

Just or Right Intention

A just war must be waged with the right intention. For Augustine, right intention

always focused on the love of neighbor and enemy alike. In line with these Augustinian

sentiments, to be considered just, a war must be waged with the intention of establishing

good order or correcting an unjust order. It is never waged out of anger, hatred, or

revenge. So, just war is declared with the intention that good will result from the use of

potentially deadly force. Given these ideas, the most persuasive argument or intention to

wage war is to secure a just and lasting peace for all sides in a conflict, not just the victorious in war. Thomas Aquinas quotes Augustine: "True religion looks upon as peaceful those wars that are waged not for motives of aggrandizement or cruelty, but with the object of securing peace, of punishing evil-doers, and of uplifting the good" (1981, 1354).

Theorists explain that it is never permissible to wage war to promote tyranny, oppression, or domination. Following Augustine's views, it is also unjust to seek vengeance or to satisfy a lust for domination. Right intention condemns motives like revenge, hatred, and cruelty. To avoid these wrongs, the goals of any war must be justifiable. In this regard, a goal such as the Allies' demand of an unconditional surrender in World War II may in fact violate the criterion of just intention. It could be argued, however, that any surrender less than unconditional might have impeded the political reconstruction of Germany and Japan. Given the just goals of war outlined by Augustine and Aquinas, economic or political gain would almost never constitute just intention. On the other hand, the restoration of peace and civil order appears to be the most acceptable and most easily justifiable conditions for war. Other just intentions may include stopping or punishing aggression, and re-establishing civic order. These, then, have traditionally been accepted by just war theorists as legitimate, rightful, and just motives for declaring war.

Just or Legitimate Authority

Just war may only be waged by legitimate, sovereign, or competent authority. For most of the evolution of just war theory, legitimate authority has meant declaration of war by a ruler or a legitimate head of state. This rather narrow or restricted interpretation of competent authority eliminates individuals, warlords, or strongmen who might wreak havoc, destroy resources, and ruin innocent lives to forward a personal agenda. Such goals ignore or dismiss any patriotic or national agenda. This criterion prevents or eliminates situations created by megalomaniacs or "madmen" who might resort to force to further personal interests or goals.

According to Augustine, the criterion for just authority [that is, a ruler] is best understood in light of Romans 13:3-4: "Then do what is good, and you will receive approval, for he [just authority] is God's servant for the good. But if you do wrong, be afraid, for he does not bear the sword in vain; he is the servant of God to execute his wrath on the wrongdoer." The Bishop of Hippo interpreted this passage as a legitimate or just authority's right to declare war. In short, this passage authorizes rulers to carry out, in God's name, the affairs of state, one of which is, unfortunately, the authority to wage just wars. Augustine, and later, Aquinas set the standard for just authority in declaring wars:

> For it is not the business of a private individual to declare war, because he can seek redress of his rights from the tribunal of his superior. Moreover, it is not the business of a private individual to summon together the people, which has to be done in wartime. And as the care of the common weal is committed to those who are in authority, it is their business to watch over the common weal of the city, kingdom or province subject to them. (Aquinas 1981, 1352)

This category may be more broadly interpreted in the 21st century world to give international organizations such as the United Nations, or coalitions of nations like

NATO, the right to declare war. Ordinarily, individuals or organizations may not declare a just war. Only legitimate rulers or regimes possess the moral and legal authority to declare war, for they alone have traditionally possessed the legal authority to act for their citizens. The prerogative to use force is that of governments, not private individuals. Nevertheless, that principle raises a fundamental question:

> ...The just war theory insists that private individuals have no right to use force. That prerogative is rather entrusted to governments in the needful exercise of their duty to preserve peace and maintain a just order. The question to be faced, then, is strictly speaking not whether an individual ... may fight; rather, it is whether government ever has the right to engage in armed conflict and whether one should participate as an agent of government in such conflicts. (Holmes 2002, 4)

James Turner Johnson answers in the affirmative: "In contrast to the contemporary emphasis on defense as the only justification for resort to force, this core concept of right authority has the *prima facie* effect of favoring certain interventionary uses of force in the interest of internationally recognized standards of justice" (Johnson 1999, 31).

A related issue concerns official representatives of a people. For example, if an ethnic group lacked an elected or legal head of state, could a group of officially selected representatives of a people other than a recognized government (ethnic nation, political faction, guerilla organization, etc...) legitimately declare a war, as did the representatives of the American colonies in their war of independence against the British Crown? This question is especially relevant given the growth of guerilla movements, insurgencies, and other intrastate organizations. There is no definitive answer to this question; it remains open to further debate and clarification by theorists.

Potentiality (Reasonable Chance for Success)

JUST WAR THEORY: A CONTEMPORARY MODEL

To be considered just, war must be waged only when there is a reasonable chance for success. While some may view this criterion as somewhat cynical, to others it represents a leader's or government's moral obligation to value the lives, property, and future of its citizens. Just war theorists insist that it is immoral to risk the lives of both the innocents and combatants in war, as well as their social infrastructure, when no reasonable chance for success exists. Put positively, war must only be waged when there is a reasonable chance that the national goals and objectives being sought may be met. For some theorists, sending combatants to war without any reasonable hope for attaining military goals is ethically questionable, if not immoral. So, if defeat is probable or at least highly likely, or if the likelihood of achieving the goals being fought for is minimal or non-existent, a resort to force should not be a viable option for the national leadership. In other words, if defeat in conflict is likely, or if the achievement of national goals is unlikely, the wagers of war have a responsibility to reassess the decision to use force, even force used defensively. They must consider other options.

According to this criterion, rulers must entertain the possibility of ending a conflict, withdrawing from a fight, or discussing terms of surrender if the attainment of goals is impossible or the cost of victory is too high. Quite simply, potentiality directs that lives should not be sacrificed for futile or unrealistic causes. The use of force must therefore have a reasonable likelihood of success. Lives should not be expended for frivolous or futile causes. This criterion also raises the issue of guerilla wars begun with the hope of enlisting the aid of most citizens or other nations (as France aided the colonies in their revolt against the British Crown).

One of the most popular expressions used by patriotic Americans during the Cold

War between the United States and the former Soviet Union was: "Better dead than

Red!" This retort was used quite often to express the resolve of American citizens to fight

the evils of communism to the very end, even if that end meant self-destruction. This

slogan, which brings up the question of honor as well as principle, highlights the reality

that some things are, in fact, worth dying for. Nevertheless, while symbolizing firm

resolve and righteous determination, this Cold War slogan would probably not meet the

moral standards posed by the criterion of reasonable success.

Proportionality

Proportionality means that the values to be protected or recovered and the goals or

good to be achieved by the use of deadly force are sufficiently important (Daly 2001, 3).

They must outweigh the injury, death, and destruction that will probably be caused by the

use of force. According to this criterion, the human costs of war must be proportionate to

its potential military or political gains. This criterion, therefore, weighs the likely results

of war against the expected goals to be achieved through force. Care must be taken not to

equate this criterion with some sort of utilitarian formula. However, this criterion

undeniably raises consequentialist considerations. Proportionality requires that both right

actions and right results be kept a part of the just war equation.

The criterion of proportionality has received considerable attention since the

invention of weapons of mass destruction, especially nuclear weapons. During the Cold

War between the Soviet block and the NATO allies, some theorists questioned whether

the use of nuclear weapons could ever comply with the criteria of proportionality and of discrimination. They argued that nuclear weapons could never be so specifically targeted as to destroy only military targets or combatants, while isolating noncombatants. Further, they contended, the principle of "double effect" (where good and evil both result from a single action) would probably not apply to using nuclear devices. Many moralists held that by their very nature and the scope of their destruction, nuclear weapons could not discriminate civilian from military targets. These ethicists further argued that the death and destruction wrought by nuclear attack could never be proportional to any good to be achieved by using such a weapon. For them, a war could never be just if it produces more devastation than it ultimately prevents.

Last Resort (Exhaustion of all Other Means)

Some theorists, such as the modern pontiffs and the Catholic bishops, insist that just war must be waged only as a last resort. Thus, as long as there is a reasonable chance of resolving the conflict by other nonviolent means, such as discussion, negotiation, diplomacy, compromise, economic sanctions, or some other means, war should not be an option. For those who hold to the relevance of this criterion, war must remain the final option of nation-states. It must only be declared after all other realistic avenues of nonviolent resolution/nonviolent means and statecraft have been tried and exhausted. This criterion is an important reminder that war would never be entered into lightly; just cause is not an open license to use force.

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Other criteria of some theorists for going to war:

(1) Formal Declaration

Deadly force, which some call *de facto* war, has been used or attempted often since the United Nations organization was established in 1945. Many U.N. members, including the United States, have used deadly force numerous times since then. The U.S. did so, for instance, in Korea (1950-1953), Lebanon (1982), Vietnam (1962-1974), Grenada (1983), Panama (1989-1990), and Iraq (1991). It has not once, however, declared war since December 1941 when Congress, at the request of President Franklin Roosevelt formally declared war against Japan. Some theorists hold that to be considered just, a war must be formally declared. The United States Constitution, in fact, requires a formal declaration of war before invoking a legal status between warring nations.

The criterion of the issuance of a formal declaration of war, insofar as it includes the aims and intentions of the belligerents, allows three dynamics to occur: (1) it indicates to a potential belligerent how war might be avoided, or once initiated, how it might be terminated; (2) it affords other nations the opportunity to assess whether a just cause exists, thus guiding their actions justly throughout the duration of the hostilities; and (3) it shows unanimity among the people of their nation in their support of the use of force. A criterion requiring a formal declaration of intentions and outlining the conditions under which the war may be avoided, is wise morally, if not always politically.

(2) Just Goals of War

Since its Augustinian foundations, the Christian just war theory demands that war must only be waged when the final goal or end of war aims to achieve the common good, that is, a just and lasting peace. It holds that no other goal or purpose is morally adequate to justify warfare. The criterion of *just goals of war* closely resembles the criterion of *right intention*. This criterion is also called *limited objectives*. The spirit of the goals or purposes of war opposes agreements, armistices, cease fires, or other war cessation terms that refer to "unconditional surrender," the surrender of sovereignty, or termination of a nation's social, political, legal, or religious culture or structures. Such terms of expectations, which are viewed as unwarranted, are therefore unjustifiable ends of war. Any conditions demanding the surrender of a people's right to rebuild and re-enter the good graces of the international community would also be considered unjust goals or purposes of war. Finally, national gain, glory, or territorial expansion are rarely accepted as justified or valid ends of war.

(3) Comparative Justice

The criterion of comparative justice broadens the discussion of the first criterion of going to war: just cause. "In the uncertainties and complexities of a specific dispute, judgment considers the whole range of issues between contending parties" (Daly 2001, 3). By exhausting all peaceful means of resolution, belligerents have aired the nature of their grievances and identified the source of conflict. This criterion for justice is a subtle reminder that, as first suggested by Francisco Vitoria in the 16th century, both parties may actually have some just causes in the dispute. Through a thorough examination and

process of international debate, negotiation, and arbitration, ideally led by a neutral third party, some common ground may well be found to prevent the use of force. Lacking total success, this process may at least limit the force to be used in the ensuing conflict.

(4) Reluctance

According to Augustine and Aquinas, war should be initiated with a certain sadness or reluctance to be considered a just war. It should recognize that, even though the resort to force may sometimes be the lesser of two evils, it is still considered an unfavorable option. In short, all war is an affront to civility and good order, even when its conditions are just. Regret and reluctance should therefore be in the hearts of those who choose to declare and those who fight wars.

Conclusion

Although far from exhaustive, the above list includes some of the principal criteria applied by just war theorists. As mentioned, there are diverse ethical and theological backgrounds that impact the theory of just war. The criteria presented above, which are broad in scope, are therefore open to a wide range of interpretation and application. They do, however, place limits or parameters on when war might justly be declared and pursued. While scholars generally agree on the moral principles implied in these going-to-war criteria, they may disagree as to how the principles may be applied or interpreted. After this review of the conditions under which a just war may be justifiably

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initiated, it is time to examine the second major category of just war theory: how just

wars *remain* just in the midst of the chaos, uncertainty, and inhumanity of war.

Jus in Bello: *Just Behavior During War*

A few years after America's war for independence, in 1785, three American

founding fathers, Benjamin Franklin, John Adams, and Thomas Jefferson, traveled to

meet with representatives of the King of Prussia. Their primary diplomatic mission was

to address issues concerning the treatment of prisoners of war. As a result of their

meeting, guidelines were developed that addressed the needs of prisoners of war. Less

than a century later, the Czar of Russia asked nations to send representatives to Saint

Petersburg to consider whether the use of the latest forms of military technology should

be banned on moral grounds, given their horrific effect on combatants. In 1899,

representatives from around the globe met at The Hague to discuss what constitutes just

behavior during war (*jus in bello*). They examined in particular what sort of treatment

and protection should be afforded to noncombatants and prisoners of war.

These meetings eventually produced the world's first international rules of war.

These laws of armed conflict were universally established through the Geneva

Conventions (1864, 1906, 1929, 1948, and 1949) and, through international peace

conferences held at The Hague in the Netherlands (1899 and 1907). These conventions

defined the roles and rights of combatants and noncombatants, provided guidelines for

the protection of prisoners of war, and offered proposals for the monitoring of combatant

behavior during war (ICORC/Red Crescent 2000).

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After World War II, suspected war criminals were indicted, tried, and convicted for (war) crimes against humanity. In executing some persons for their wartime behavior, the world community sent a strong signal to the world: Unjust behavior, even in the midst of the chaos and inhumanity of war, will not be tolerated by international edict and law. More recently, war crimes tribunals have convened, again at The Hague, where individuals charged with criminal wartime behavior in the Bosnian and Rwandan conflicts are being tried for unjust conduct in war.

Proponents of just war theory recognize that just wars are "justified" not merely by their goals, but by their means as well. *Jus in bello* or principles of right-behavior-during war recognize that the use of deadly force in combat is subject to certain moral restrictions and prohibitions. Thus, even in the inhumanity and chaos of war, combatants must adhere to moral restraints and ethical guidelines recognized as such by the civilized world. These guidelines help to ensure that violence and destruction are kept to a minimum as military objectives are fought for, and that innocents be isolated and protected, thus promoting the ultimate goal of a just and lasting peace. As the historian Anthony Hartle has shown, codes of chivalry guided both medieval knights and ancient Chinese warriors. Hartle also describes the codes of Indian warriors as recorded in the Hindu *Book of Manu*. Hartle offers these examples to show that many cultures throughout history have adopted a code of conduct for those called to fight their wars (Hartle 1989, 57).

According to James Turner Johnson, a leading authority in *jus in bello* criteria, Western civilization's guidelines for just behavior during war originated with the chivalric codes of the knights of the Middle Ages. Others see more ancient guidelines,

such as those found in the Hebrew Scriptures, especially in the 20th through 23rd chapters

of the Book of Deuteronomy. Of course, the scriptures contain many references that

relate to just behavior in war as well as to the society at large. A particularly relevant

example is the following:

> You shall not molest or oppress an alien, for you were once aliens yourselves in
> the land of Egypt. You shall not wrong any widow or orphan. If ever you wrong
> them and they cry out to me, I will surely hear their cry. My wrath will flare up,
> and I will kill you with the sword; then your own wives will be widows, and your
> children orphans. (Exodus 22: 20-22)

In his address to a U.S. military ethics conference in 1999, Colonel Timothy

Challans, a military ethicist, stated, "The centerpiece of military ethics should be *the*

moral application of military force. Because the business of the military involves killing

people and breaking things, military ethics should examine the moral boundaries and

limits of those activities" (Challans 1999, 2). Challan's remarks remind us that substantial

contributions to the longstanding code of just behavior in war have come from the

warriors themselves.

Most persons serving in the military take seriously the phrase "the noble

profession of arms." They view their role as protecting the weak and defending the

oppressed and value their professional responsibilities to God, to nation, to fellow

warriors, and especially, to the defenseless. Warriors have traditionally focused on two

criteria for moral direction in war, *proportionality* and *discrimination*. Responsible

warriors plan war in a responsible and moral way. They seek to have their operational

plans meet the standards set in the criteria of proportionality and discrimination. In fact,

these criteria generally remain at the forefront of their consciousness throughout the

planning process. Just warriors strive to ensure that just military ends are achieved by just

military means. The United States Navy has published a guide for all those ordered to

command naval units. This naval publication addresses some of the commander's moral

responsibilities in war:

> Officers in command are not only responsible for ensuring that they conduct all combat operations in accordance with the law of armed conflict; they are also responsible for the proper performance of their subordinates. While a commander may delegate some or all of his authority, he cannot delegate responsibility for the conduct of the forces he commands. The fact that a commander did not order, authorize, or knowingly acquiesce in a violation of the law of armed conflict by a subordinate will not relieve him of responsibility for its occurrence if it is established that he failed to exercise properly his command authority or failed otherwise to take responsible measures to discover and correct violations that may occur. (DON 1995, 6-2)

Discrimination

Discrimination is, in the eyes of such theorists as Paul Ramsey and James Turner

Johnson, the most important criterion of just behavior in war. For them, discrimination is

a substantive element, an absolute principle of just war that leaves little room for

discussion or debate. It is a critical moral principle that upholds the general prohibition

against killing. In this case, it applies to the killing of civilians and those who are not

engaged in combat. Given modern military technology, this important criterion weighs

heavily on the hearts and minds of just war theorists: "One of the major challenges posed

by contemporary warfare is to deny or ignore the distinction between combatants and

noncombatants, and to attack noncombatants directly. This kind of assault on

noncombatants, which is characteristically direct and intentional, is very clearly wrong,

both morally and in international law" (Johnson 1999, 6).

The principle of discrimination directs that military planners and combatants take

every possible precaution to avoid harming noncombatants, while minimizing indirect

harm to these same individuals whenever and wherever possible. It also directs that combatants in a noncombatant status, such as those who have been taken as prisoners of war, be afforded special consideration. As noted in Chapter Two, Paul Ramsey, who believes that discrimination is a distinctively Christian element in just war theory, bases his opinion on *agape*, or Christian love, which he describes as the primary motivation for Christian moral decision-making (Johnson 1999, 36). While Ramsey appropriately focused on the motive of love, the Bible addressed the need for discrimination millennia before Ramsey wrote *Basic Christian Ethics* in 1950:

> When you besiege a city for a long time, making war against it in order to take it, you shall not destroy its trees by wielding an axe against them; for you may eat of them, but you shall not cut them down. Are the trees in the field men that they should be besieged by you? (Deuteronomy 20: 19)

Prior to the 20th century, combatants had little trouble discriminating between fellow warriors and civilians. The process became more complex during World War I with the rapid advancement of military technology like aviation, artillery, and chemical warfare. Because of the combatants' failure to discriminate in their use of such advanced military technology, five to ten percent of all casualties in the first global war were noncombatants. In World War II, historians record that tens of millions of people were killed or seriously wounded, and, of that number, 70 to 80 percent may have been civilian casualties. The most notable examples were, of course, in Hiroshima, Nagasaki, and Dresden.

Besides noncombatants, other groups of people are protected by the principle of *discrimination*. As early as the 5th century B.C., the Chinese military philosopher Sun Tzu wrote, "Treat the captives well and care for them" (Sun Tzu 1971, 76). Once captured, prisoners of war must be granted special noncombatant status. According to the

principle of *discrimination*, prisoners must be accorded just treatment outlined in the conventions and laws of international humanitarian agreements, specifically the Geneva Conventions. Violations of these treaties and conventions may lead to prosecution for war crimes once war is terminated and peace is restored.

The advance of technology complicates application of this principle as unconventional warfare, international terrorism, weapons of mass destruction, and urban warfare present new challenges to the traditional understanding of *discrimination*. In addition, recent developments like the use of civilian contractors in combat scenarios, the sharing of technological infrastructure by both military and civilian societies, cyber-warfare, and other advancements, complicate compliance with this critical criterion for both contemporary military planners and warriors. National reaction to the atrocities committed at My Lai, Vietnam (March 16th, 1968), where as many as 500 noncombatants were killed by American troops, and the use of precision-guided munitions to minimize collateral damage to civilians in Kosovo (March 24th to June 20th, 1999), illustrate this country's long-standing national resolve to adhere to the principle of *discrimination* in war. American warriors, who have traditionally honored and valued the principle of *discrimination* in battle, will continue to do so.

An ethical principle directly related to *discrimination* is the principle of *double effect*. The principle of double effect is, "A rule of conduct frequently used in moral theology to determine when a person may lawfully perform an action from which two effects will follow, one bad, and the other good" (Connell 1967, 1020). The John Ford offers an explanation of double effect that is very relevant today:

> The foreseen evil effect[s] of a [person's] action is not morally imputable to him [or her], provided that (1) the action in itself is directed immediately to some

other result, (2) the evil effect is not willed either in itself or as a means to the other result, (3) the permitting of the evil effect is justified by reasons of proportionate weight. (1970, 26)

Although it is morally permissible to conduct military operations that may result in the potential injury or death of noncombatants, it is morally repugnant to make noncombatants direct targets of a military attack. Killing civilians out of revenge or to break a population's will to fight, as the Allies attempted in Dresden during World War II, can never be justified in the code of conduct. Double effect distinguishes between direct and indirect targeting or direct and indirect killing. While the principle of *discrimination* strictly forbids the direct targeting of noncombatants, it does not absolutely prohibit the targeting of essential *military* targets, even in situations where noncombatants may be at risk or civilian infrastructure may be destroyed as an indirect result of the targeting. The principle of double effect is not a precise moral calculation:

> Though basic in ... Catholic morality, [this principle] is not, however, a mathematical formula, nor an analytical principle. It is a practical formula which synthesizes an immense amount of moral experience, and serves as an efficient guide in countless perplexing cases. But, just because it is called into play to solve the more difficult cases, it is liable to ... abuse. (Ford 1970, 27)

Nuclear weapons provide a unique challenge to both proportionality and discrimination. In his book *Just War: Principles and Cases*, Richard Regan presents three scenarios for nuclear targeting: *counter-force targeting*, which is limited to military personnel, equipment, and industry; *counter-city targeting*, which targets population centers; and *counter-control targeting*, which aims at military and political control objectives. Modern popes and the American bishops, who also have all strongly condemned counter-population and counter-control targeting, question whether the use of

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weapons of mass destruction such as nuclear arms can **ever** meet the moral scrutiny of either discrimination or proportionality. Professor Connell provides a good summary of the moral principle of double effect, one that will be clear guidance to those who apply this principle in the confusion of war:

> Theologians commonly teach that four conditions must be verified in order that a person may legitimately perform such an act [double effect]. (1) The act itself must be morally good or at least indifferent. (2) The agent may not positively will the bad effect but may merely permit it. If he could attain the good effect without the bad effect, he should do so. The bad effect is sometimes said to be indirectly voluntary. (3) The good effect must flow from the action at least as immediately (in the order of causality, though not necessarily in the order of time) as the bad effect. Otherwise, the agent would be using a bad means to a good end, which is never allowed. (4) The good effect must be sufficiently desirable to compensate for the allowing of the bad effect. In forming this decision many factors must be weighed and compared, with care and prudence proportionate to the importance of the case. (Connell 1967, 1021)

Proportionality

One of the most famous battles of Desert Storm (1991) was the last major battle of the desert war, the battle on the Highway to Basra. At the brink of military defeat, the Iraqi forces fled Kuwait and began to withdraw from Kuwait City. As the Iraqi column of tanks, armored vehicles, and stolen cars and trucks made their way north to Basra, Coalition air forces started their attack. First, planes bombed the front and rear of the column and in the process created a huge traffic jam near Al Jahra. For over two hours, the coalition planes strafed and bombed the vehicles trapped in the column.

> The next day, a two mile long stretch of highway was littered with bombed-out vehicles, nearly all of which were civilian cars or trucks stolen from Kuwait City, many filled with goods looted from the city. Although reports vary, perhaps as few as two percent of the bombed vehicles were tanks or armored personnel carriers. After the ceasefire, approximately 1500 wrecked and abandoned vehicles

were counted on this stretch of highway, though it appears more Iraqis fled their vehicles than were killed. (Obenhaus 2000, 53)

Pictures of the wreckage on the Highway to Basra, to the consternation of many, were shown to television viewers all over the world.

These pictures of devastation convinced Coalition leaders to end the military operations of Desert Storm. Protests were lodged against the Coalition forces by anti-war critics like Ramsey Clark. Some accused the Americans of leading a "turkey shoot" and killing thousands of defenseless Iraqis who did not possess the ability to fight back. This incident led to a discussion of whether or not the American-directed Coalition forces adhered to the *jus in bello* or right behavior in battle principle of discrimination in their attack. As it turned out, although numerous vehicles were destroyed, the Iraqis lost two to three hundred soldiers in the battle, all armed and trained combatants, not the thousands claimed by critics of the Coalition forces. While the objective in war is the defeat of the enemy, there are boundaries that should never be crossed, and one boundary is the unnecessary killing of the enemy.

Military planning is conducted with set military goals in sight: the destruction of enemy targets, securing military objectives, defeating or isolating enemy forces, denying the enemy the capability to continue the fight, and so on. The principle of *proportionality* dictates that combatants use no more force than is necessary to achieve their military objectives. In other words, combatants must also avoid disproportionate collateral damage to civilian life and property whenever and wherever possible. Proportionate response also requires that combatants avoid unnecessary destruction to achieve military or national goals.

Most people understand the relationship of the criterion of discrimination to the principle of double effect. Some, however, fail to understand its significance for the criterion of proportionality. One scholar comments as follows:

> The principle of proportionality is incorporated into the law of double effect. This involves practical judgments about the likely outcomes of military actions: how important is the military target to the enemy's war effort in relation to the [likely] ... number of noncombatant casualties? The amount of destruction permitted must be proportionate to the importance of the objective. (Fleury 1998, 7)

So, the principle of proportionality applies both to the decision to go to war and the carrying out of war activities. This principle demands that warriors conduct themselves with honor, fighting as Augustine would have urged them to fight: with a love and concern for their enemy.

Right Intention

It may be advantageous to add a third category to just behavior in war: *right intention*. Like proportionality, *right intention* is one of the categories found in both the *jus ad bellum* and *jus in bello* categories of just war. There is a difference, however, between the two uses of the term. In the context of going to war, to determine whether a war is just, right intention refers to the justice of the war itself. For example, wars fought for the sake of achieving or restoring justice, or wars conducted with the intent to do good are, for Augustine, focused on doing good for neighbor and enemy alike.

Even in the thick of battle, the focus of military and civilian leaders and combatants must remain that of establishing a just, lasting peace. Keeping just intentions empowers warriors to stay morally focused, guards against unethical decisions or

behavior in battle, and prevents a vengeful spirit that might ultimately compromise the goal of establishing a just and lasting peace.

Keeping a proportionate and discriminatory focus in the chaos of war can be quite a challenge to military commanders and their troops. Commanders of combat units must continually weigh the principles of *discrimination* and *proportionality* against those of military necessity. In 1863, Francis Lieber defined military necessity as "those measures which are indispensable to securing the ends or goals of war, and which are lawful according to the modern laws and usages of war" (Kaszuba 1997, 3). Military necessity refers to actions that must be taken if military objectives are to be achieved with minimum loss of time, resources, and human life.

Such decision making is never easy. In the World War II movie classic: *The Cruel Sea,* Jack Hawkins starred as a naval surface commander who watched in horror as an enemy submarine torpedoed one of the ships in his convoy. Quickly ordering his destroyer to General Quarters, or combat readiness, he began the hunt for the submarine below. As he neared the target, he noticed a group of Royal Navy survivors in the waters. These British seamen yelled with delight in anticipation of being rescued after their ship had been torpedoed by the same submarine that Hawkins now hunted; they cheered when they saw Hawkin's ship approach. The camera then focused on the face of Hawkins, the captain. Watching the ship's sonar, Hawkins soon realized that the enemy submarine was hiding directly beneath the survivors in the water.

The captain faced a horrible moral dilemma: Should he attempt to rescue the survivors, risking the safety of the convoy, or should he depth charge an enemy already located and targeted? By eliminating the convoy's deadly threat, he would in the process

be killing innocent survivors. Military necessity dictated that the ship's captain should eliminate the deadly threat to the convoy and therefore depth-charge the submarine, despite the almost certain killing of the survivors. Militarily speaking, his decision to depth charge and sink the submarine was justified. Humanly speaking it evoked an angry response from his crew, many of whom turned to the captain and shouted, "Murderer!"

Commanders must weigh a number of considerations as they balance just war principles with military necessity and operational concerns, like the safety of their troops (force protection), the proportionate use of force, and the overall accomplishment of their military mission. Canadian Colonel J. G. Fleury addresses the ethical challenges military commanders face in war. In an article entitled *Jus in Bello and Military Necessity*, the colonel writes: "The ultimate objective of war is the 'overpowering of the opponent.' Therefore, what generals are in fact told by their political masters is: Succeed in war according to its laws, if you can; but at all events and in any way succeed" (Fleury 1998, 2). Fleury correctly observes: "The more critical the accomplishment of the military objective [or] the more ferocious the combat, the greater the chance that military necessity will outweigh the ethical guidelines of *discrimination* and *proportionality*" (Ibid.). Decisions made by operational commanders ultimately affect the lives of those entrusted to their care, the lives of those they must fight, and all of the noncombatants they must protect to the best of their ability. Ethical points include those offered in just war theory, in military standards of conduct, in clear and unambiguous rules of engagement, and in the training received in core values and ethics. All these points, properly applied, empower warriors to maintain their ethical focus, fight the good fight, and keep war just.

Should we expect the same moral focus from our enemies? The quick answer is: There are no guarantees. Nevertheless, the effectiveness of the code of conduct in war depends upon the expectation that the enemy will reciprocate and that those who violate the principles of just behavior in war will be prosecuted once the war has terminated. Unfortunately, it is usually only the defeated who are held criminally responsible for their actions.

Despite the confusion and inhumanity of combat, the warriors' code demands that they conduct themselves professionally and with moral courage. The just war criteria of discrimination, proportionality, and right intention provide moral focus for those who plan military operations and those who must fight in those same operations. These principles of right behavior in war keep the focus on the ultimate aim of every just war: the establishment of a just and lasting peace. These moral anchors help combatants keep a moral and humane focus during some of the most dehumanizing, chaotic, and bloody moments of their lives.

Jus Post Bellum

Michael J. Schuck asks a very interesting question in his outstanding article, "When the Shooting Stops: Missing Elements in Just War Theory." It is this:

> If one assumes for the moment--as most Christians do--that the rubrics of the just war theory are morally tenable, ... then post-war behavior must [also] come under moral scrutiny. If Christians are called upon to probe the moral propriety of entering and conducting war by using the seven *jus ad bellum* principles (which concern justification for using force) and the two *jus in bello* principles (which applies to conduct in war), should they not also be called upon to monitor the moral propriety of conducting a war through some set of *jus post bellum* [just behavior after war] principles? (1994, 982)

As noted in this dissertation, theorists on just war, both ancient and modern, have stressed the need to keep focused on the goals of war, especially on the creation of a just and lasting peace. Schuck and Kant are two theorists who have suggested a third major category of just war, *jus post bellum*. However, given the focus of the theory of just war and the emphasis placed on the aims or goals of war by almost every theorist, it makes sense to propose this development in just war theory. Among the factors needed to achieve a just and lasting peace are these: proposing moderate terms to end a war and taking steps to restore the defeated to a position of respect within the community of nations.

Both moderation and restoration guard against Augustine's primary fear of war: that it corrupts combatants and deprives them of their humanity. Therefore, warriors fight out of a sense of love for neighbor, a love that directs moderate behavior in combat and in the restoration, rebuilding, and even reconciliation that are key elements in any formula for a just peace. Schuck proposes three principles to this new category of just war. First, he suggests a *principle of repentance* wherein the victors of war conduct themselves humbly. This proposal is strikingly similar to Plato's suggestion to refrain from raising monuments to the victors in war because such memorials do not lend themselves to the establishment of a true peace.

Secondly, Schuck proposes the *principle of an honorable surrender*. General Ulysses S. Grant selected Medal of Honor winner Joshua Chamberlain of Maine to receive the surrender of General Robert E. Lee's troops. On the morning of the surrender, Chamberlain's troops extended their Confederate brothers-in-arms every military courtesy and great respect. Each side rendered military honors to their former foes, and

the troops were dismissed and left the surrender site. Honorable surrenders begin the healing process for all sides in a conflict.

Finally, Schuck proposes that former belligerents adopt a principle of restoration (1994, 983). For starters, both sides might return to the sites of their battles and restore the landscape to something resembling its pre-war state. Dangers like barbed-wire fences, unexploded ordinances, and land mines would be removed to ensure the safety of children, farmers, and passers-by. Certainly, these *jus post bellum* acts display the Christian focus of *agape* suggested in the writings of Paul Ramsey and Augustine. These authors reflect Christian love and reconciliation, rather than love of violence or revengeful cruelty. The same love, which must direct moderate, ethical behavior in combat, should guide those who construct an armistice to build peace in the *jus post bellum* phase of the just war.

CHAPTER FIVE:

JUS IN BELLO: CONTEMPORARY CHALLENGES AND ISSUES

As previously discussed, just war tradition is a living doctrine. It is philosophy in process: ever challenged, ever evolving to meet the contemporary demands of each new historical epoch. Its categories and criteria remain open to continual scrutiny, study, interpretation, and reapplication. This dynamic process has kept the theory of just war relevant for millennia. Many factors affect our understanding and application of the theory, such as the nature of international relations as well as the policies, strategies, and operational concepts of military strategy. Included here is the development and subsequent application of new military technology, and another is the formulation, interpretation, and application of international law. These factors challenge conventional understanding of the theory and its application to contemporary issues. Every society faces certain extraordinary events that will challenge the existing understanding and application of the just war theory. For instance, one such factor that has emerged since World War II is scientific weaponry known as weapons of mass destruction.

Weapons of mass destruction hav radically challenged the application of just war theory, and especially the *jus in bello* principles of proportionality and discrimination. Many religious leaders, including every pontiff since Pius XII, has questioned whether these weapons could be used proportionately and discriminately. As a result, the concerns of these spiritual leaders were echoed in the Documents of Vatican II and in the pastoral statements of episcopal conferences around the world. In its *Constitution on the Church in the Modern World*, called *Gaudiem et Spes* [Joy and Hope], the Second Vatican

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Council warns that use of the new scientific weapons is neither discriminatory nor proportionate:

> The horror and perversity of war are immensely magnified by the multiplication of scientific weapons. For acts of war involving these weapons can inflict massive and indiscriminate destruction far exceeding the bounds of legitimate defense. Indeed, if the kind of instruments which can now be found in the armories of the great nations were to be employed to their fullest, an almost total and altogether reciprocal slaughter of each side by the other would follow, not to mention the widespread devastation which would take place in the world and the deadly after effects which could be spawned by the use of such weapons. (Abbott 1966, 293)

Is *Gaudiem et Spes* right, or are there situations where the limited use of these "scientific weapons" might fall within the bounds of just behavior in war? As has been discussed earlier in this study, a few theorists, especially Paul Ramsey and James Turner Johnson, contrary to most church leaders, believe that there could be discriminate and proportionate uses of these weapons. This clear disagreement demonstrates how theology, politics, and military technology challenge a conventional understanding of the just war theory. All these factors demand ongoing application and study of the principles of the theory.

Chapter Five is divided into four areas for study and consideration. These subtopics each in their own right challenge a traditional understanding or application of the *jus in bello* of just war theory. While many other contemporary challenges exist, these four were chosen because they reflect a broad yet interconnected range of issues. These issues raise new and provocative questions regarding the defining and application of *jus in bello* principles. The challenges presented in this chapter include: (a) **modern military technology**: the development of contemporary military technology calls for a fresh reappraisal of traditional precepts and criteria of just war theory. This dissertation will

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examine two new military technologies, precision guided munitions and cyber or

information warfare; (b) **children and warfare**: children are war's most vulnerable

victims; this subsection will discuss war's impact on children and the ever-growing

problem of using children as combatants in war; (c) **military contractors**: the use of

civilian contractors in indirect or sometimes direct combat support challenges the

traditional just war understanding of the criterion of discrimination; (d) **the environment**

and war: the chapter's final segment provides readers a brief look at war and the

environment. This subsection addresses the vulnerability of the environment in conflict

scenarios and asks why nature, on which all life depends, should not be afforded some

sort of discrimination in conflict scenarios. This small yet representative sampling of

issues may suffice to convince readers of the ever-changing nature of the theory of just

war. For these and other reasons, theorists must continually address these issues in their

study, debate, and contemporary application of the theory.

Modern Military Technology

So by the benefit of this light of reason, they have found out artillery, by which wars come to a quicker end than heretofore, and the great expense of blood is avoided; for the numbers slain now, since the invention of artillery, are much less than before, when the sword was the executioner.
                                                                    ---John Donne

In his insightful volume, *Ethics in an Age of Technology* (1993), Ian Barbour

defines technology as "the application of organized knowledge to practical tasks by

ordered systems of people and machines" (1993, 3). There he also states that fifty percent

of the world's scientists and engineers are involved in defense-related research and

development (Ibid., xvii), although some challenge his statistics. Given the large percentage of professionals engaged in the development of military technologies, it should come as no surprise that this emerging technology challenges the ethical base of both those who create and those who must use this technology.

As military technology advances, so too does a combatant's ability to neutralize, immobilize, and eventually eliminate the enemy's ability to wage war. Through the development and use of new military technologies, such as weapons of mass destruction, combatants are empowered to kill on a scale hitherto unknown in human history. This technology has advanced to the point where some militaries possess the firepower, not only to defeat opponents, but also to wipe out the entire human species in the process.

Military technology, therefore, significantly affects the way combatants conduct war, as well as the rules and principles guiding just behavior in war. James Turner Johnson makes the claim, "The shape of war may vary because of many factors, but among the most important of these are the kinds and amounts of weapons employed ..." (Johnson 1999, 1). From this fact flows the question whether military ethics have kept pace with its new military technologies. Many ethicists think not: "Our moral concerns seem to be lagging far behind our technological inventiveness. Whatever our skills are at the level of inventions, at the level of morals, we seem to be lagging far behind" (Maguire and Fargnoli 1996, 70-71). Can modern military technologies help combatants discriminate and be more proportionate in waging war? Charles Dunlap claims that modern military technology might actually blur, not sharpen a combatant's ability to be either discriminate and/or proportionate. With a few examples of modern military technology this segment will discuss how that technology might impact just war theory.

Precision-Guided Munitions

One of Pablo Picasso's most famous, yet most disturbing works of art is the painting entitled *Guernica*. On April 26, 1937, at the height of the Spanish Civil War (1936-1939), German bombers attacked the Spanish city of Guernica. The city had no military significance; it was a purely civilian target. In the process of the attack, German pilots killed large numbers of innocent civilians and destroyed much of the civilian infrastructure. The Spanish Civil War was a disastrous war for all Spaniards, both for the belligerents who fought in the war and for the Spanish noncombatants who did not: "For three years the war ground on, with terrible cruelties on both sides, again presenting an issue of conscience to the world" (Garraty and Gay 1972, 1056). Picasso's painting depicts the horror of the sometimes indiscriminate and disproportionate nature of war, the horrors inflicted and received by all sides to a conflict, whether these cruelties are planned or not. Through *Guernica*, Picasso depicts the horrors of war in hopes that future generations might come to appreciate its inhumanity, especially its indiscriminate and disproportionate effects on innocent noncombatants.

Just a few months after the end of the Spanish Civil War, German armies once again acted disproportionately and indiscriminately to begin the Second World War on September 1, 1939. After overwhelming Poland in a few days, the Luftwaffe bombed major cities thus showing the same indiscriminate and disproportionate use of force in its *blitzkrieg* operations; they employed this strategy throughout the war. These operations killed many thousands of innocent civilians in the process. These and similar operations

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resulted in the deaths of millions of noncombatants. Those who survived these attacks

often lacked the food, clothing, and shelter to survive the aftermath of the bombings;

most of the civilian infrastructure was destroyed by such tactics. Americans and British

bombings were, at times, just as disproportionate and indiscriminate as those of the Axis;

they targeted civilian populations in places like Dresden, Hamburg, and Tokyo, as well as

by atomic bomb attacks on Hiroshima and Nagasaki. Hundreds of thousands of

noncombatants were killed in Allied bombing missions. The theory behind such attacks

was the following:

> Air Force Doctrine [in World War II] was known as the 'industrial web theory' of
> aerial bombardment, which attacked an enemy's vital centers or war-making
> potential rather than fielded forces. The objective of such attacks was to destroy
> both the enemy's ability to fight and his morale, or will to resist. ... It established
> national morale and industry as more crucial objectives than enemy armies, and
> argued that the quickest way to win a war was through air attack upon the
> enemy's population and production facilities. (Rizer 2001, 8).

So, as this war progressed, the parameters of aerial targeting expanded from strictly

military targets, to military-industrial targets, to industrial targets, and finally, specifically

civilian targets. The strategy moved from destroying enemy combatants and military

targets to that of breaking the national resolve of the enemy to continue the fight.

> The U.S. Army's Air Corps Tactical School handbook, *Air Warfare* [Douhet
> 2002], stated that "air warfare may be waged against hostile land forces, sea
> forces, and air forces, or it may be waged directly against the enemy nation. The
> possibility for the application of military force against the vital structure of a
> nation directly and immediately upon the outbreak of hostilities *is the most
> important and far reaching development of modern times*. It was not a uniquely
> American idea that attacks against the enemy's economic and social infrastructure
> would determine the outcome of the war. The Germans and the British also shared
> this view. In fact, it was a general consensus that would shape World War II."
> (Friedman and Friedman 1996, 210, emphasis added)

The strategy of targeting industrial and civilian infrastructure to break the will of a people to fight was very much a part of America's failed targeting strategy in the Vietnam War. As was true for the British, Germans, Russians, and others in World War II, the targeting of North Vietnamese industrial and military targets eventually strengthened the resolve of the North Vietnamese to continue their struggle, despite the deaths of more than one million of their fellow citizens. A similar reaction occurred in Great Britain under German bombing in World War II and in Germany under Allied bombardment. An opposing view regarding Vietnam, however, holds that the United States bombings hastened North Vietnams' willingness to negotiate in 1973. Whether this is true or not, such bombing appears to contravene the criterion of discrimination.

Lessons learned from its defeat in the Vietnam War factored significantly in America's revamping of its military strategy after the war. This change was especially relevant in regards to aviation warfare strategy: "Between the end of the Vietnam War [1975], and Desert Storm [1991], a revolution in the theory of aerial warfare took place. ... Pilots who had flown combat missions in Vietnam planned a new war in the Persian Gulf" (Friedman and Friedman 1996, 255). New military technology would significantly influence the reformulation of America's aviation strategy. Much of the air campaign in Vietnam was conducted using a World War II model. In these cases, B-52s flying high above their targets, dropped thousands of conventional bombs in hopes of destroying relatively small or limited targets, or to support very limited military objectives. New technology was developed after the Vietnam War that would accomplish objectives without the use of large numbers of missions or bomb clusters:

> With the technological development of precision-guided munitions (PGMs), stealth technology, and satellite-aided navigation, aerial bombardment has

become more precise than ever before. A US stealth fighter with a single, laser-guided bomb, for example, can now destroy a target that in WW II required [hundreds of] B-17 sorties.... (Rizer 2001, 1)

Using this new precision-guided technology, strategists could now plan to target the war fighting *abilities*, not just the *will* or *resolve*, of the enemy. This development significantly affects the principles of both proportionality and discrimination. Precision-guided munitions, a significant factor in this development, played a key role in the air campaign against Iraq in *Desert Storm* (1991).

In the 17th century text cited earlier (p. 237), John Donne put great faith in a military technology's ability to make war less bloody and less destructive. Viewing the invention of artillery as a gift to mankind, he felt that this new military technology would make wars more humane by making them less destructive and shortening their length. Unfortunately, the carnage of the 19th and the 20th centuries proved him wrong. The newer military technology, artillery, not only failed to make wars quicker or less deadly, but this "wonder technology" actually increased the death and destruction of war. For example, in the American Civil War, which employed this new technology in every conceivable military venue, artillery barrages and antiquated tactics made warfare more destructive and lengthier. Donne's theory would be disproved once again in the horrible wars of the 20th century:

> John Donne's notion that the advent of artillery would diminish the carnage of war would seem to be the cruelest--and most preposterous--of ironies. Yet not uncommonly the introduction of new military technology is accompanied by enthusiastic predictions that the savagery of war will somehow be mitigated. All too often, however, these promises remain unfulfilled. Consider, for example, the widely held 17th century belief that the invention of gunpowder [had] made war 'less horrible.' (Dunlap 1999, 24)

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John Donne's attitude should give us cause for concern. Should we accept the theory that new military technologies will empower militaries to be more discriminate and proportionate, in essence, to be more humane in the conduct of war? One modern theorist, Kenneth Rizer, portrays his optimism in an article written for *Air and Space Power Chronicles*, an influential professional journal published for military aviators:

> While this increased precision [PGM technology] is a welcomed development for air campaign planners wishing to apply the military principle of 'economy of force,' it has the added benefit of simplifying compliance with legal and ethical requirements to minimize 'collateral damage,' or the unintended bombing of noncombatants and non-military facilities. (Rizer 2001, 1)

Thus, theorists are predicting that the invention of precision guided munitions will lead to a more humane age of war. In speaking of these modern weapons in terms of their ethical dimensions, some go so far as to label them "moral weapons":

> ...[T]he new class of weapons holds open the possibility of an end to the age of total war. Total war was built on two characteristics of gun technology: inaccuracy and massed explosive power designed to compensate for it. Masses of weapons had to be produced and fired or dropped together in order to hit elusive targets. This ... made society as a whole the target of warriors. The result has been an unprecedented and unbearable slaughter. The accuracy of PGM promises to give us a very different age; perhaps even a more humane one. It is odd to speak favorably about the moral character of a weapon, but the image of a Tomahawk missile slamming precisely into its target when contrasted with the strategic bombardments of World War II does in fact contain a deep moral message and meaning. (Friedman and Friedman 1996, x-xi)

Will this new military technology lead to a more discriminate and proportional use of military force? An answer requires analysis of a military technology commonly referred to as precision guided munitions (PGMs) or "smart bombs."

An almost indelible image left on the American consciousness after Desert Storm (1991) was that of General Norman Schwarzkopf briefing the press on the nation's latest

military technological advancement: the "smart bomb." During one particularly animated

press briefing, the General played a videotape of a precision guided missile making its

way to its intended target, an Iraqi bridge. The general pointed excitedly to a car as it

raced across that same bridge on the outskirts of Baghdad. Pointing to a vehicle crossing

the bridge, he told the press corps that the driver of the vehicle was one of the luckiest

men in the world. Just as the car made its way to the opposite side of the bridge, the video

showed a precision guided missile striking the bridge and destroying the target while the

driver raced away. Apparently that driver escaped this aerial attack unharmed, but not all

Iraqis were so fortunate.

Technology ruled the air and the battlefield in *Operation Desert Storm*. The air

war began when Coalition air and naval forces launched 114 Tomahawk cruise missiles

(PGMs) at specific targets in Iraq. These targets included anti-aircraft weapons, aircraft

hangars, command, control, and communications centers, power plants, military

headquarters, other military targets, and so on. Other forms of advanced weaponry, such

as stealth bombers, enabled pilots to penetrate Iraqi airspace and visually target scud

missiles or other "mobile" targets. PGMs and other advanced military technology

> ... allowed crews of F-117 stealth fighters, as well as F-111 fighter/bombers, to
> thread laser and optically guided bombs through air vents and doorways. Fewer
> munitions were required to accomplish the same task as before. ... Moreover, this
> technological superiority not only allowed the coalition to gain absolute air
> superiority rapidly, it [also] insured maximum compliance with the law of armed
> conflict and, consequently, minimal collateral damage or injuries to noncombatant
> Iraqi citizens. (Kaszuba 1997, 10-11)

In the decade or so following Desert Storm, the United States has come to rely on

its precision guided munitions (PGMs) in a number of military scenarios. PGMs were

used a number of times against the Iraqis, to uphold the military integrity of United Nations designated "no-fly" zones as advanced technology helped destroy Iraqi surface to air missile systems (SAMs) in these post-war patrols. Precision-guided armaments were also used in other venues. For example, smart bombs were used effectively in Kosovo, and the only major mistake seems to have been a human one when a Chinese consulate building was destroyed. More recently, as America and her partners waged war against Taliban and Al Qaeda strongholds in Afghanistan, PGMs allowed coalition forces to destroy enemy mountain or cave strongholds without endangering allied military personnel.

In general, these precision guided munitions, which provided "… extremely accurate means of target acquisition, unaffected by range and immune to countermeasures, … proved themselves highly lethal munitions capable of hitting targets over extended distances in any conditions while producing minimal collateral damage" (Bacevich 1996, 1). In using these armaments, the United States eliminated enemy threats with military technology, not ground troops, and, compared to the thousands of Russian casualties in Afghanistan during the 1980s, this technology saved untold coalition lives.

Consequently, this question must be asked: "Do precision guided munitions offer humanity a morally superior way to conduct its wars by ensuring that the principles of proportionality and discrimination are better met?" The immediate answer is that "smart munitions," which minimize collateral damage to noncombatants, appear to allow the military to carry out military engagements with a precision never before imagined. In fact, by empowering warriors to be more discriminate and proportionate in targeting enemy objectives, they may adhere more closely with *jus in bello* principles.

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Unfortunately, as several scholars note, humanity cannot always rely on the predictability of such technology, as the following example demonstrates.

In his prophetic volume, *Why Things Bite Back: Technology and the Revenge of Unintended Consequences*, Edward Tenner reminds readers, "Wherever we turn, we face the ironic unintended consequences of mechanical, chemical, biological, and medical ingenuity -- revenge effects, they might be called" (Tenner 1997, 6). Brigader General Charles Dunlap suggests that military technology be added to Tenner's list. Since many technological advancements "bite back," should we not expect the same "recomplicating" factors from military technology, especially from "smart munitions"? A few revenge factors, which have already surfaced since the first use of these new, more precise military technologies, can be cited.

First, "smart munitions" technology is available only to a select few countries in the world today. Whenever one combatant retains a technological edge over an adversary, one unintended consequence, or revenge effect, appears to be the unpredictable nature of an enemy's response. Dunlap suggests that technologically superior nations should not expect less technologically-advanced adversaries to be grateful for the use of more humane technology against them:

> Iraq's firing of Kuwaiti oil fields was a monstrous environmental crime. Yet, as Professor Michael Schmitt acknowledges, 'It could be argued that the fires were intended to take advantage of 'weaknesses' in high-tech coalition weapons. . . . Smoke can foil guided munitions. Consider the difficulty, for example, of using an electro-optical guided weapon on a smoke-covered target.' As a matter of fact, the fires' smoke did degrade the effectiveness of PGMs as well as that of coalition intelligence-gathering satellites. Authors Michael R. Gordon and General Bernard E. Trainor argue that the Iraqis torched the Kuwaiti oil fields to 'erase the American's high-tech advantage.' Indeed, the Iraqis were able to launch one of their few offensive actions when an armored formation emerged from the smoke

of the burning Burqan oil fields and struck US Marines early in the ground war. (Dunlap 1999, 4)

In other words, Iraqi reactions to the coalition use of a superior technology, like that of precision guided munitions, suggest that use of advanced technology might drive adversaries to use what Dunlap describes as "...pernicious methodologies to counteract the superior technology used against them" (Ibid., 5). Further, Saddam Hussein reacted to the potential use of PGMs against Iraq not only by employing environmental tactics, but also by using an old, yet proven method of counteracting a superior technology: he used human shields to protect targets that might have proved attractive to an enemy with smart bomb technology.

Since their use in Desert Storm human shields have been used in other countries (Somalia, Chechnya, and Bosnia) to counter superior military technology (especially PGMs). In Chechnya, for example, insurgents countered superior Russian military technology by threatening to use prisoners as human shields. They felt that the Russians would be less hesitant to hit a target populated by other Russians. In Iraq, Saddam Hussein continues to use human shields in his own palaces, in command-and-control locations, or in any location that might prove an attractive target for coalition PGM attacks. According to reliable data, Hussein has located anti-aircraft emplacements, military equipment, and military command centers near hospitals, schools, and civic compounds. He hopes that this tactic, although a violation of international law, will make adversaries think twice before targeting such noncombatant hubs, and he is probably right. Nor is Saddam Hussein the only leader willing to employ ancient methods to counter a more modern technological threat. In examining the actions of Somali warlords

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who used human shields in their fights of the 1990s, we should heed the warning, "If the opponents are bloody-minded enough, they will always exploit the humanitarian attitudes of their adversaries" (Dunlap 1994, 5).

During these air operations, the National Command Authority, President Clinton, and his Secretary of Defense, William Cohen, ordered American pilots to fly at very high altitudes to protect American pilots from enemy anti-air weaponry. In essence, during the Clinton administration, protecting of our own warriors and military equipment became the primary focus of military campaigns. Flying higher to protect our planes and pilots resulted in higher noncombatant casualties. In demonstrating America's reluctance to lose its own troops in combat, the United States president in effect made noncombatants in Bosnia, rather than its soldiers, pay with their blood for the protection of our pilots.

Over time, the use of advanced military technology forces the enemy to adopt revised strategies and military policies. Milosevich's troops eventually learned techniques of cover and concealment that allowed them to escape the effects of the coalition bombing, but the noncombatants did not fare so well. Not only did noncombatants suffer injury or death from this bombing, but the lives of noncombatant survivors changed dramatically when their societal infrastructure and basic support systems were destroyed in bombings by the coalition air forces (Goulding 2000, 5). Thus, yet another unforeseen consequence of the use of PGMs is the seductive way that war planners can hide behind this technology to ensure the protection of their warriors, often to the detriment of the innocents.

Dunlap has suggested that the advances in precision guided munitions may result in what he describes as a new era of barbarism in warfare. The fear is that these weapons

may result in more, not less, bloodshed. In his estimation PGMs may complicate, not

simplify, compliance with the principles of proportionality and discrimination. Finally,

precision guided munitions, however they are projected, may not always achieve the

military objectives expected of them. For instance, during the Bosnian air war, "The air

arms of NATO bombed a small, economically insignificant country for ten weeks and

inflicted tremendous infrastructure damage, but these same attacks did little to bring

about a change in policy by the government of Slobodan Milosevich. Thirty thousand

sorties by more than a thousand aircraft left his army intact" (Goulding 2000, 2).

Cyber-Warfare/Information Warfare

The enemies of peace realize they cannot defeat us with traditional means. So they are working on new forms of assault: cyber attacks on our computer systems.

---President William J. Clinton

As the American military readies itself to face the military challenges of the 21st

century, it is confronted with a threat that differs from danger in the traditional sense of

the term. The threat may come from an individual or individuals who possess the

technological ability to attack and quite possibly destroy the cyber-infrastructure that

supports many elements of American society. Such individuals may elect to attack

military networks, the economic networks of America's businesses, the medical networks

providing life support systems to critically ill patients, or quite possibly the governmental

infrastructure shared by the executive, legislative, and judicial branches. As one scholar

notes: "To many, PGMs are not the only means of fulfilling the dream of a more humane

war. The advocates of 'information operations' and cyber-war contend that 21st century conflicts can be fought virtually bloodlessly in cyber-space" (Dunlap 1999, 25).

In October, 1999 the United States military opened a new chapter in military warfare as it officially entered the field of cyber-warfare. Cyber-warfare was given critical focus in the Air Force Space Command at Peterson Air Force Base in Colorado Springs, Colorado. The United States military created a joint task force to address the potential for cyber-war, and especially, attacks against computer networks. This joint task force will be responsible for "… coordinating the defense of the military's computer networks against foreign threats and cyber-terrorists. Soon after, the mission will expand to include offense: … to conduct wartime military operations against computer networks in enemy countries" (Markoff 1999, 5). This step marks a significant milestone for a military that has only recently begun preparing to defend itself against these new types of technological threats in the area of information warfare. It marks the advent of a new type of military preparedness, a new stage for military warfare:

> The new era, in which science and industry play a determinant role in the destructive power of the military, is characterized by the existence of three major types of weapons that succeeded one another in importance within age-old offensive versus defensive conflict: obstruction weapons (ditches, ramps, bastions, armor, and fortifications of all types), weapons of destruction (spears, arches, firearms, artillery pieces, missiles, etc.), and finally communication weapons (signal, information and transport vectors, optical telegraphy, radio-telephony, radars and satellites, among others). Each of these types of weapons dominated a particular kind of confrontation: siege warfare for the first, maneuver warfare for the second and [communications warfare] for the last one. (Nunes 1999, 1-2)

The development of new military technology has now moved us into the arena of information or cyber-warfare. Military planners, who are beginning to understand the extent of its military applicability, are exploring ways to employ it as a force-multiplier

for its operational readiness and effectiveness in this information-dominated age. Cyber or information warfare targets this new information technology. For example, it seeks to destroy both military and non-military targets. These include communications depots, equipment, support mechanisms, and information-based military infrastructures essential to the effective waging of modern warfare. Among these are command, control, communications, and intelligence structures. Cyber-warfare may be conducted through the use of such weapons as nuclear (to disable electronics and communications from high altitude bursts), precise munitions like smart bombs, laser weapons, microwave weapons, computer virus-type weapons, and conventional weapons.

While cyber-warfare sounds like a scenario taken from a movie like *Wargames* or a chapter from a Tom Clancy novel such as *Debt of Honor* or *CyberNation*, cyber-attacks have been continually waged against America's computer infrastructure. As Alexander notes: "Too frequently, Department of Defense computers have been targeted – sometimes by joyriding young hackers, sometimes by foreign operatives. Several studies have evaluated the vulnerability of DoD networks" (1999, 104). The Defense Department estimates that one quarter of a million probes are conducted annually against defense targets, and more than half of these attempts are successful (Ibid.). One major attack against global internet servers occurred on Monday, October 21, 2002:

> An unusually powerful electronic attack briefly crippled nine of the 13 computer servers that manage global Internet traffic ... The FBI and White House were investigating. One official described the attack ... as the most sophisticated and large-scale assault against these crucial computers in the history of the internet. The origin of the attack was not known. ...The 13 computers are spread geographically across the globe as precaution against physical disasters and operated by U.S. government agencies, universities, corporations and private organizations. Computer experts who manage some of the affected computers ... said [that] they were cooperating with the White House through its Office of

Homeland Security and the President's Critical Infrastructure Protection Board. (Bridlis 2002, A17)

These attacks temporarily paralyzed almost seventy percent of all the global internet computer servers. Since many governmental organizations, including some defense and intelligence-related activities, rely on the shared use of such types of computer infrastructure, the security of the country may someday be threatened by this same type of cyber-information warfare attack. In his book, *Information Warfare: Chaos on the Electronic Superhighway*, Winn Schwartau presents various reasons why countries or individuals might want to conduct cyber-attacks against this country. Potential motives include power, politics, control, money, and defiance; all these are strong incentives to initiate cyber-hostilities.

While cyber-warfare and non-lethal weaponry might appear to be an attractive way to wage a non-lethal war, there are some foreseen and unforeseen consequences. According to Marhoff:

> Beyond challenging America's own military culture and requiring sophisticated technology, cyber-warfare raises a fundamental philosophical question. The biggest challenge that such warfare may pose for democratic societies is that it further blurs the line between military and nonmilitary targets. (Markoff 1999, 5).

Such attacks seem no different in principle than targeting a water system or a bridge over a river, anything that may be described as social infrastructure. Still, some see information or cyber-warfare as an attractive option to future war. The military defines this new warfare in these terms: "Information warfare is any action to [d]eny, [e]xploit, [c]orrupt, or [d]estroy the enemy's information and its functions [so as to protect] ourselves against those actions and exploit [...] our own military information functions" (Borden 1999, 1).

It is important to note that some of the world's most capable cyber-warriors are not employed by their governments, and certainly not by their defense establishments. In the United States, for example, many of these cyber-warriors are bright, creative civilians who, like the teenagers portrayed in *Wargames,* wreak confusion, chaos, or even terror through use of technological expertise in cyber-attacks. So, one of the "recomplicating" or revenge effects of cyberwarfare is the democratic nature of the technology, with the potential that anyone, not just those authorized by the government, can get involved in a war or national contingency, and, perhaps, initiate an unauthorized cyber-attack on the perceived enemy. Such a scenario is not farfetched.

Dorothy E. Denning, Professor of Computer Science, Director of the Institute for Information Assurance, Georgetown University reports that, after the horrific events of September 11, 2001, an unauthorized group of patriotic hackers, feeling compelled to get involved in the national campaign on terrorism, decided to assist the United States through use of their technical expertise. These individuals conducted an unauthorized cyber-attack against America's new enemies:

> A group called the Dispatchers announced they would destroy Web servers and Internet access in Afghanistan and target nations that support terrorists. Led by a 21-year-old security worker 'Hackah Jak' from Ohio, the group of 60 people worldwide defaced hundreds of Web sites and launched denial of service attacks against such targets as the Iranian Ministry of Interior, the Presidential Palace of Afghanistan, and Palestinian ISPs [Internet Service Providers]. Another group, called Young Intelligent Hackers Against Terror (YIHAT), claimed they penetrated the systems of two Arabic banks with ties to Osama bin Laden, although officials from the banks denied any security breaches occurred. The group, whose stated mission is to stop the money sources of terrorism, issued a plea on their Web site for corporations to make their networks available to group members for the purpose of providing the 'electronic equivalent to terrorist training camps.' Later, they took down their public Web site, apparently in response to attacks from other hackers. (Denning 2001, 1)

In *Debt of Honor* (1994), Tom Clancy describes a scenario in which an isolated cyber-attack causes a stock market collapse and a subsequent economic crisis for the country.

As for other "recomplicating" effects of cyber-warfare, according to Alexander, another disquieting factor is that the skills required to engage in information warfare are increasingly accessible to many computer users, whereas formerly "only a very few, highly educated computer scientists held the requisite skills to create viruses and surreptitiously break into information systems" (1997, 107). This means that more people will possess the ability to conduct cyber-attacks as the technology becomes more user-friendly to the general population. It also means that computer centers, libraries, universities and so forth might become targets (similar to civilian workers in munitions factories).

Security for the nation's information systems weighs heavy in the minds of those responsible for cyber-security in the war on terrorism. Mounting evidence suggests that the Al Qaeda terrorist network has identified the American information infrastructure as one of our most vulnerable national assets:

> As first reported in *The Washington Post* and confirmed by *ABC News*, U.S. investigators have discovered there have been numerous anonymous probes over the Internet for information regarding the nation's emergency phone system, water-distribution networks, and power grid, all critical parts of the U.S. infrastructure. Perhaps more disturbingly, officials also confirmed to *ABC News* that some of these 'probes' were focused on 'digital switches' devices designed to allow authorized personnel to monitor and control various aspects of a complex network of machines. Perry says these control systems used to be 'esoteric systems' ones that used proprietary interfaces and computer languages, and were accessible only to those who were trained in their specific designs. But many such control systems are now based on the same UNIX software and communication protocols used by computers that are widely connected to the Internet. And while most control systems aren't connected directly to the Internet or accessible through a simple Web page, they are connected to other computer systems that typically are available online. (Eng 2002, 1)

Much of the information highway and electronic superstructure is shared by government and non-government, military and non-military, business and non-business sources. This makes virtually everyone vulnerable to future cyber-attack. This vulnerability extends from the corridors of the Pentagon to the critical care wards of hospitals, to the wardrooms of business, to the trading floors of Wall Street. Civilian, political, business, and military sources all share the information highway, all are interconnected, all are interdependent, and therefore all are vulnerable. The same vulnerabilities that paint cyber-warfare as an attractive, non-lethal form of warfare, make it a potential nightmare for the same reasons.

Cyber-warfare also presents challenges for the traditional military culture. The military chain of command may erode if military culture is compromised; good order and discipline may be compromised if civilian and military personnel, some trained to understand the role of the chain of command and with a sense of military discipline, and some not, work side by side at the same electronic consoles. While civilians operate from a sub-culture modeling business / scientific, and management / professional cultures, military personnel operate from a command structure model and are trained to follow the orders of superiors so long as these orders do not violate conscience or common sense (Vest 2000, 3). In cyber-war, a young corporal who possesses more technological knowledge than his officer-superior may question a superior's orders, yet not be privy to the strategic reasons behind the issuing of the order.

Finally, how should America respond to a cyber-attack? What would constitute a proportionate response to an attack on a military target, on a Wall Street asset, or on portals used to provide public utilities? How do we separate what is in the national

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interest from less critical targets, or, given the interdependence and interoperability of systems, should we even consider the difference?

When it comes to cyber-technology, a good rule of thumb may be, that which makes people strong is also what leaves them vulnerable:

> The threat of a strategic information war completely erases the distinction between military and civilian systems. The connection between them complicates the process of detecting an attack and developing an effective defense. So, the disturbing question still remains [one] of figuring out how a government can protect its information infrastructure, which it neither owns nor controls. ... We should always bear in mind that information warfare is a two-edged sword. The countries that are most capable of waging it are also the ones most vulnerable. The growing dependence on sophisticated information systems brings an increasing vulnerability to hostile actions, to include terrorist acts. (Nunes 2001, 12)

Should such a cyber-attack be considered an act of war or an act of mischief, and who decides, the courts or the National Security Council? "Moreover, a litmus test is needed to assess whether the cyber-attack even constitutes a direct attack to our vital interests: national security, homeland defense, and economic prosperity. When does a cyber-attack become a weapon of mass destruction or mass disruption" (Cabana 2000, 2)? Should the response be different for an individual working for the government, for a commercial entity, or for a domestic versus foreign threat? What constitutes a proportionate response to a cyber-attack from a foreign nation?

Should the Central Intelligence Agency (CIA), Federal Bureau of Investigation (FBI), or National Security Agency (NSA) be involved in protecting against domestic cyber-attacks, even if the threat cannot be identified as emanating from a foreign government? Should the military respond if it possesses the ability to conduct such a defense, or would such a response violate the principle of discrimination? The October

1999 issue of *The Armed Forces Journal* reported that a Marine Corps officer

participating in exercise Urban Warrior in CONUS (Continental United States) stated, "I

would put down my arms and walk away if the armed forces were to do anything against

the American people " (Cabana 1999, 6). Such is the nebulous nature of this new warfare.

In asking us to consider technology's boundaries, methods, and goals, philosopher of

technology Carl Mitcham questions technology's relationship to other disciplines like art,

science, and ethics. Mitcham believes that this comprehensive view of technology will

lead to a fuller understanding of technology's effect on society (1994, 27). By studying

the multi-dimensional aspects of information technology, society will come to a greater

comprehension of what everyone might lose in a cyber-war and a deeper understanding

of the challenges that cyber-warfare poses to contemporary just war theory.

Children and Warfare

The welfare of America is closely bound up with the welfare of mankind.
---The Marquis de Lafayette

As this dissertation has demonstrated, one of the most critical components of just

war theory is its principle of discrimination. Noncombatants have traditionally been

accorded some degree of protection from deliberate targeting, entanglement, and

collateral damage. The percentage of noncombatants impacted by war rose from the 18th

through the early 20th centuries. These statistics continued to rise through both world

wars and then through the cold war. What is even more alarming is that by the end of the

20th century, a very high percentage (some guess as many as 90%) of all victims of war

were noncombatants. Children make up a sizeable percentage of those noncombatants

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who were and are directly or indirectly affected by the ravages of war and armed conflict (UNICEF 2000, 2). The United Nations Convention on the Rights of the Child defines child as anyone up to the age of eighteen years. The United States refuses to sign this convention unless the age is lowered to seventeen years, an age at which citizens may enlist in the American military.

Graca Machel, special advisor to the Secretary-General of the United Nations on matters concerning children in conflict, reports that in the last decade of the 20th century, two million children have been killed in armed conflict (Machel 2000, 2). At one time, most of the world's armed conflicts were conflicts between nation-states or coalitions of nation-states. In today's international climate, more and more conflicts are intrastate, civil wars, or some sort of political insurrection. With conflict tending to come in the form of internal intrastate conflict, civilians, and especially children, become more vulnerable to the ravages of the conflict. Today's modern battlefield, like Stalingrad in World War II, might just as easily be the suburb of a large urban area as that of an isolated battlefield or stretch of desert. Given this change in the nature of conflict, civilian casualty statistics are expected to remain high in the decades ahead.

Few would argue that no group of noncombatants is more deserving of discrimination and protection in war than society's youngest and most vulnerable group, its children.

> Waging war is not generally considered child's play. And yet, at the end of the 20th century, as wars between nations and civil strife within nations persist, millions of children are affected throughout the world. Although they do not start the wars, children experience the negative consequences of conflict as their lives are disrupted, shattered, or lost. And in a number of countries, children serve as combatants. (MacCormack 1999, 80)

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Graca Machel eloquently defends the rights of children in her comments to the United Nations: "War violates every right of a child: the right to life, the right to be with family and community, the right to health, the right to the development of the personality, and the right to be nurtured and protected" (MacCormack 1999, 2).

An example of this tragedy can be found in the former Union of Soviet Socialist Republics. Chechnyan rebels have been fighting for independence from Russia for over a decade. Their struggle for independence has taken the lives of thousands on both sides of the conflict, but what is most alarming is that Chechnyan children make up as many as 40% of the casualties of this armed insurrection. During the Bosnian conflict, it is estimated that child casualties ran higher than 25%. Death is only one negative consequence of war. Young victims of war are also sold into slavery, raped by conquering combatants, or forced to support the combatant efforts of those who hold them captive. "In some raids during the carnage in Rwanda in 1994, virtually every adolescent girl who survived militia attack was later raped ... and in Bosnia and Herzegovina, the rape of teenage girls was systematized into a deliberate policy" (UNICEF 2000, 4).

The statistics of the child-victims of war are staggering. UNICEF (United Nations International Children's Emergency Fund: established in 1946) reports that between 1990 and 2000 millions of children were killed in war, and millions more have been seriously injured or disabled. Still, millions of others have been forced to witness the horrors and inhumanity of war, events that will leave them emotionally scarred for life (UNICEF 2000b, 2).

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Children are not only the targets of combatants; many are forced to join the combatant ranks themselves. Tens of thousands of children are forcibly seized or recruited to be child-soldiers for rebel groups and undermanned armies. "Most are adolescent boys, but many are girls, and some recruits are 10 years or younger" (UNICEF 2001b, 3). These children-soldiers are usually conscripted into support roles, but are gradually indoctrinated, trained, and integrated into combat or guerilla units. Children are kidnapped from the streets, and even from homes, schools, and orphanages to fill these combat positions. According to the UNICEF study, "Adult Wars, Child Soldiers," children are put through a brutal form of basic military training, are then employed as pack-horses for the back-breaking work of the military unit, and are severely punished for even the smallest of infractions. Many must witness the brutal mistreatment, rape, or murder of their own families, fellow villagers, and friends; the less fortunate must then kill to prove their loyalty to their military unit (Tang 2002, 1). "In Liberia, a quarter of the soldiers in the civil war throughout the 1990s were children, and the National Liberation Front of Liberia had its own 'small boys' unit' for boys between the ages of 6 and 20" (MacCormick 1999, 4). Similar statistics could be cited for the Eritrean Liberation Front in its three decade armed struggle against Ethiopia.

New military technology has aggravated the situation. New, lighter weapons make it easier to train children in combatant skills. New technologies make the assembling and disassembling of weapons simple enough for a ten year old to handle a rifle, and weighing only seven pounds, this deadly weapon can be carried by most children for miles. CBS news correspondent David Martin reports that Sergeant Nathan Chapman, the first American soldier killed in combat in the war in Afghanistan, appears

to have been killed by a child soldier, a fourteen-year-old *Taliban* fighter (CBS News 2002, 1). *Abu Sayeff*, a terrorist organization in the southern Philippines, openly recruits and forcibly conscripts child soldiers for its military units.

Child conscription makes moral choices difficult for the adult soldiers who face these child-warriors. For example, Army Ranger Keni Thomas, a seasoned special operations veteran, had such a moral dilemma in Somalia in 1993. In the midst of a gun battle in the capital city of Mogadeshu, Army Rangers became aware that they were fighting against child-soldiers in an urban environment. The Army Rangers were forced to target and kill the children who were trying to kill them. Under international law, anyone with a weapon is considered a legitimate target, but the reality of killing children has left these rangers with moral pain that will last a lifetime. Although soldiers in combat have little choice but to return potentially deadly fire with deadly fire, even when the other combatants are children, the situation creates great moral confusion for those forced to kill these under-age warriors.

This author had the opportunity to lecture at the *Asian Pacific Institute* in Hawaii in October 2002. While there, he learned that almost 25% of the world's 300,000 child soldiers serve in the East Asia and Pacific Realm, in conflicts such as those fought by the Tamil rebels. Some of these children are recruited at seven years of age and then forced to commit murder as an initiation rite (Tang 2002, 1). Once robbed of their youth and then exposed to the horrors of war, they can rarely return to normal life. As these children are exposed to the nightmare of conflict, they are eventually desensitized to the inhumanity and cruelty of war. As a result, their temperament and world-view changes forever. Experts at UNICEF call this experience *psychosocial deterioration*. These

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children are rarely the same again. Few will ever enjoy normal family life; few will ever be afforded the opportunity to return to school and receive an education; and few will be able to break ties with those that have recruited them into military service. War will be the only means of sustenance and socialization that they will ever know.

It should also be mentioned that children are considered expendable to those who recruit them for military duty. As such, children are often placed in extremely vulnerable situations. This tactic aims to ensure that adult soldiers, whose lives are given a higher value than those of children, are only placed in danger when it is absolutely necessary. For example, child-warriors are often used to set up ambushes or to walk point for rebel groups. Children, considered expendable by the armies they serve, are often used to clear minefields or to walk before regular troops in areas where there may be mines. Recent examples of this practice occurred in the Bosnian and Rwandan conflicts. Of all *recorded* deaths and injuries, nearly 40% of all landmine casualties are estimated to be children. As many as 10,000 children a year die from landmine explosions while tens of thousands of others are permanently disabled (UNICEF 2001b, 4).

Another hazard of war is the displacement of peoples and the creation of human waves of refugees. In the chaos and brutality of war, thousands of children are displaced refugees, orphans, or both. Forced to flee from their homes, villages, and countries, these victims become vulnerable targets for exploitation. Young girls often become targets for rape, sexual exploitation, prostitution, and slavery. Many child refugees die because they are denied sparse resources like food, water, clothing, medicine, and shelter.

Children are also vulnerable to some unexpected consequences of military technology. Military forces regularly use artillery and rocket armaments containing

depleted uranium. These depleted uranium-tipped shells are extremely effective weapons for targeting tanks and armored vehicles. Depleted uranium shells, which were reportedly used widely in Desert Storm to meet the threat of Iraqi armor, can cause cancer:

> In March 1998, Dr. Awad Khadim al-Ali--trained in Britian and a member of the Royal College of Physicians--showed me his maps of cancer and leukemia clusters around the southern city of Basra and its farming hinterland, the killing fields of the last days of the 1991 Gulf War that were drenched in depleted uranium dust from exploding U.S. shells. The maps showed a four-fold increase in cancers in those areas where the fighting took place. (Fisk 2001, 2)

Child cancer rates and sickness skyrocketed in certain sections of Iraq after Desert Storm. American soldiers who served in these areas contracted some still undiagnosed illnesses, including a mysterious malady called "gulf war syndrome," and some have suffered cancers. A significant number of children who played in or around these areas, and especially around abandoned equipment ended up contracting cancers or other illnesses after the war. Instances of child leukemia and other cancers rose sharply in the decade following the war. Land mines and depleted uranium shells are just two examples of military technology that remain lethal, even after the fighting has stopped.

It is obvious that the world needs more effective and enforceable international mechanisms to protect children from and in war. The 1990 *Convention on the Rights of the Child* (see appendices) gives the world community a foundation to build upon, but this foundation is only a beginning. The United States and Somalia have yet to sign this Convention. America's reluctance to sign is related to its intent to continue recruiting citizens seventeen years of age and older for military service. This practice violates the convention, which sets the minimal age for military recruitment at eighteen. Even so, the United States could still lend its support to the Convention, even without being a

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signatory, at least until diplomats and lawyers are able to iron out the present difficulties and formulate an agreement that all could agree to.

Nations must be more aggressive in safeguarding children both from the direct and indirect consequences of war. They must work hard to ensure that children are not exploited and made to serve soldiers or, worse, serve as soldiers. Displaced children must be protected against forced conscription into combat-related activities. Violators of this principle must be prosecuted as war criminals. Such prosecution would send the world a strong signal that the exploitation of children will not be tolerated. Finally, countries involved in conflict must remove land mines as part of the post-war armistice. These mines, which remain deadly for decades to children, farmers, and other innocents, must be removed before combatants leave the area. Although the Ottawa Mine Ban Treaty became international law in March, 1999, and most countries of the world became signatories in 1997, the United States has yet to ratify this treaty (MacCormick 1999, 5). This country is still very much dependent on landmine defenses against North Korea. As with the convention against child-warriors, the United States could lend its support, in principle, to this treaty while waiting for other details to be worked out.

UNICEF leads the way in calling for the de-arming and demobilization of all child combatants throughout the world. In seeking to help reincorporate children into their society, UNICEF deserves support from all nations. It is the right thing to do.

CONTEMPORARY ISSUES AND TRENDS IMPACTING *JUS IN BELLO*

Civilian Contractors and Combat

During the Cold War, the United States spent trillions of dollars building and maintaining a defense establishment to deter and/or defeat the formidable military forces of World Communism, especially the defense establishment of the former Soviet Union. Since the collapse of the or bi-polar East-West world, Americans have looked forward to a world where they could enjoy a breather from the tensions of the United States versus Soviet Union ideological war. They sought a "peace dividend" wherein billions of dollars once devoted to defense can now be directed into building the domestic and social infrastructure of American society. At this point, the once well-endowed military establishment was asked to save precious dollars and employ new business practices that would cut defense manpower and budgets.

Needless to say, the world did not become a safer place after the collapse of the Soviet Empire. In fact, the world, according to some international analysts, has become less safe. Nevertheless, despite more frequent deployments, ever-growing tensions, and numerous civil wars, the United States military is still under pressure to conduct the defense of the country in a more efficient and economical way. One way the military has realized substantial savings is by contracting civilians to do the work once performed by military personnel. The "privatizing" of military activities, which has indeed helped the Department of Defense save billions of dollars, has made American politicians happy since many of their civilian constituents now work for firms in their districts who serve the defense establishment. This practice brings millions of dollars of revenue and hundreds, if not thousands, of jobs to the civilian sector. The armed forces are pleased

with this trend because of costs saved on training, supervision, health and familial benefits, and pensions for these thousands of contractors. As a result, both the military and civilian sectors are well-served.

Despite deploying its forces five times more frequently since 1991, the Department of Defense has eliminated three quarters of a million servicepersons, and it has cut over a quarter of a million civilian jobs from its payrolls (Castillo 2000, 2). Congress continues to direct the military to cut costs without cutting critical defense services or abilities. What then is the result of all this downsizing and privatization of defense establishment activities? While direct combat activities have remained in the hands of military personnel and units, more military support activities have been handed over to civilian contractors. At first, this contracting was focused on base support and infrastructure, especially those military installations based right here in the continental United States. Soon, however, roles began to change rapidly.

More contractors, who are still mainly United States citizens, are now hired to provide support in overseas installations. Some of these installations are in less secure areas, including areas considered less than friendly to the United States. As military technology advances, so too does the need to supply expertise in the running of these sophisticated weapons systems, systems requiring specialized training. The Department of Defense has the option of either training its own people to run and maintain these high-technology systems or hiring civilian contractors to perform those same functions. In fact, the Congress mandates by law that companies supply contractor support for any new systems for at least four years. While this law ensures the support and ownership of those systems purchased from the politically powerful defense-industrial establishment, this

strong reliance on civilian contractors for these high-technology systems may prove problematic for the military. Turning to military members in the future will be a challenge when contractors cannot or will not support this technology.

Using civilians in combat is not a new concept. World War II offers an historical example of the use of civilian contractors in a hostile fire environment when the Navy Department hired civilian engineers and manual laborers to provide construction support to military units overseas. The Navy's "SeaBees" trace their roots to the early days of World War II, and specifically to an Admiral who was then assigned as the Chief of the Navy's Bureau of Yards and Docks, Rear Admiral Ben Moreell. He created the Naval Construction Battalions to replace civilian contractors serving naval units overseas.

As the war began, the Navy employed contractors from the civilian construction trades to meet the engineering needs of forward deployed units. These civilian contractors, who initially assisted with the building of runways, overseas basing, and bridges, soon responded to other construction and engineering needs. Some of these units came under hostile enemy fire as depicted in the John Wayne movie, *The Fighting SeaBees* (1944). As a result, these contractors asked for weapons to fight when necessary or at least defend themselves while deployed in harm's way. Realizing that these civilian contractors needed more than wrenches and hammers as weapons, the Navy replaced them with construction workers and engineers who were trained to fight, the Navy's Construction Battalions (CBs), which adapted the initials CBs, or SeaBees. The creation of the "SeaBees" was an institutional response to the problems encountered after contracting civilians to work in a hostile or potentially hostile fire environment.

Unfortunately, the lessons learned from the initial creation of the Navy's SeaBees

have not had a lasting impact on the defense establishment or the Congress that funds the establishment. The use of civilian contractors has, once again, become an attractive option for politicians. When Congress limits the numbers of troops the Commander-in-Chief might employ in a certain contingency, the President has the option of augmenting military troops with civilian contractors. "During the Vietnam War, President Lyndon Johnson avoided the limits of congressionally-mandated troop ceilings by employing over 80,000 contractors during the most intense part of the war" (Castillo 2000, 3). During America's unpopular participation in NATO's military activities against Bosnia, President Bill Clinton promised a wary Congress that he would limit United States' involvement in the military action. In reality, civilian contractors were heavily involved. However, the trend of using civilians in war zones will probably continue, for it is too attractive an option for the military to pass up. As a result, the line between civilian and warrior will continue to blur:

> Reliance on civilians likely will grow, according to the Pentagon's most recent defense review. The Pentagon plans to privatize or outsource any military activity not directly linked to fighting a war .... Reasons for the increasing use of civilians: a) the cost: the military pays more than $50,000 to send a recruit through basic training. Pentagon officials say it doesn't make sense to train soldiers to end up running forklifts or cooking food when the military can contract those services; b) expertise: because some new weaponry is so sophisticated and complicated, employees of the manufacturers are needed near the battlefield to do repairs and maintenance. ...Maintaining and helping operate military equipment has gotten so complicated that as many as five different companies can be working with one military unit, many as subcontractors; c) experience: the civilians themselves, many of them retired from the military, say one benefit of using them is the experience and knowledge they bring to the troops.(Eldridge 2001, 3)

To keep his promise to congress, yet fulfill the military requirements for the mission, President Clinton authorized the use of thousands of civilian contractors to fill

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the operational requirements of many of his military operations. Civilian contractors

continue to be recruited and deployed by the Department of Defense today:

> Thousands of civilians, many employed by defense contractors, are working alongside U.S. troops throughout the world, including those fighting the war on terror.Their tasks range from the mundane — building latrines — to the dangerous — retrieving downed fighter jets and helicopters near enemy lines. And because of them, Uncle Sam has saved millions of taxpayer dollars while focusing our fighting forces on, well, fighting. ... They are 'an integral and important part of our team during military operations,' says Army Major James Cassella, a Pentagon spokesman. For the civilians, war duty means extra money and a chance for adventure. American civilians actually have been going to battle alongside soldiers since the Civil War. While the military won't say how many are helping currently, about 2,500 went to Kuwait during the Gulf War to build desert camps, cook food and maintain ... [equipment]. (Eldridge 2001, 2)

What problems does the use of civilian contractors pose for the United States, and

how might such problems affect a contemporary understanding of the just war theory? In

particular, what are the *jus in bello* criteria for noncombatant discrimination? First,

federal law prohibits the Department of Defense from sending contractors into a hostile-

fire area unless the American Congress has formally declared war. So, formally speaking,

the last time contractors could have been legally used in military contingency operations

was in World War II. The fine line between providing military support and direct

involvement in combat, however, becomes almost indistinguishable given the new

advanced technology of military weapons systems. These contractors are protected by the

Geneva Conventions:

> The Pentagon says civilian workers are given cards indicating that they are non-military personnel serving in non-direct combat zones. Under the 1949 Geneva Convention, which outlines internationally recognized guidelines on how prisoners should be treated, the cards should guarantee humane treatment for civilians taken by an enemy. (Eldridge 2001, 2)

In Desert Shield / Desert Storm almost one in fifty Americans in the area of military operations was a military contractor or civilian. It is reported that 9,200 contractors and 5,200 civilians operated in the theater of war during the war against Iraq (Castillo 2000, 1). Some of these contractors and civilians, who were used to support combat operations, assisted in the operation of sophisticated high-technology weapons systems. Although they did not drive a tank, fly a combat mission, or carry an M-16 in a forward infantry battalion, they did operate computer consoles that directed fire against the enemy, or monitored enemy troop movements through the use of surveillance technology. Did these roles violate their noncombatant status? While lawyers may argue the legality of the issue, it seems apparent that they did contribute significantly to accomplishing military objectives in a hostile fire environment, a theater of war. Therefore, in contributing to the waging of war, these civilians apparently violated their noncombatant status and earned the title of combat- support personnel during the conflict.

The Environment and War

As already noted, the concept of just behavior in war emphasizes the criterion of discrimination. Most combatants respect the principle of discrimination. Some have even paid the ultimate price to uphold that principle by sacrificing their lives to protect or save the lives of noncombatants. Foundational elements of this criterion are found in the ancient civilizations of Greece and Israel, and its spirit is prevalent in the Roman philosophy of *humanitas*. Further developed by the medieval church, this criterion was manifest in the chivalric codes of the knights of the Middle Ages and eventually codified,

first in church law and then in international humanitarian law. Noncombatants and prisoners of war enjoy the privilege of discrimination. While the principle of discrimination legally insulates noncombatant personnel from the horrors of war, it is rarely applied to the environment, an extremely vulnerable target of war.

The environment has suffered the ravages of war since the beginning of recorded history. For instance, over two millennia ago, Rome fought some of its longest and bloodiest wars against the North African Carthaginians in three Punic Wars (264-241; 218-202; and 149-146 B.C.). One of the most devastating attacks on Italy occurred when the Carthaginian general, Hannibal, after crossing the Alps with elephants, marched on Rome from the North. Rome was seriously hurt by the First and Second Punic Wars. In these encounters, Rome lost prestige, hundreds of ships, and thousands of citizens in her struggle against the Carthaginians. Needless to say, after a four year struggle in the siege of Carthage, the Romans showed little mercy either for the Carthaginian survivors or for the ecology of the conquered area:

> Finally, in 150 [B.C.] ... Rome was presented with an excuse to declare war when a Carthaginian army invaded Numidia in defiance of the treaty with Rome. Realizing they stood no chance, the Carthaginians formally surrendered, but when ordered to move their city at least 10 miles (16 km) from the sea, determined to fight after all. After a series of incompetent generals had failed to take the city, command was finally given to Scipio Aemilianus, grandson of the consul killed at Cannae and grandson of Scipio 'Africanus.' It was he who finally took the city in 146 [B.C.], razed it to the ground, sowed salt in the ruins, and sold the inhabitants into slavery. (Lazemby 2001, 744)

After this devastation of the soil, it took more than a century for nature to regenerate these lands before they could be used once again to cultivate crops. The sack and eventual salinization of Carthage is one of the first recorded episodes of ecological

warfare. A century later in 44 B.C. Carthage, as a new Roman city, had become an important administrative center (Canby 1984, 158-159).

The United States has its own examples of environmental destruction. Displeased with the military failures of his army leadership, President Abraham Lincoln appointed General Ulysses S. Grant General-in-Chief of the armies of the United States, March 9th, 1864. Almost immediately following his appointment, Grant selected two of his subordinates to assist him with his new responsibilities, General William Tecumseh Sherman (1820-1891) and General Philip Sheridan (1831-1888).

General Grant proposed a two-pronged campaign to defeat the Confederate forces: first, Grant would lead over 100,000 men against the 60,000 man army of Confederate general, Robert E. Lee in what historians call "the Wilderness Campaign." The other prong of this military campaign was conducted by General Sherman who was ordered to move from Tennessee through the heart of the Confederacy. Although history records Sherman as the primary figure behind the scorched-earth or "total war" policy of the Civil War, these policies were clearly ordered by General Grant himself:

> Sherman's drive on Atlanta opened on 5 May [1864], in accordance with typical order from Grant: 'You I propose to move against Johnston's army, to break it up and get into the interior of the enemy's country as far as you can, inflicting all the damage you can against their war resources.' Sherman ... glimpsed the concept of total war—war on the enemy's will to fight and capacity to support fighting men, as much as on the soldiers themselves. Robert E. Lee was the finest general of a Napoleonic age that was passing; Sherman was the first general of an age that was coming, and whose end we have not yet seen. (Morison 1965, 687)

So, Sherman began his infamous "March to the Sea" at the direction of General Grant. His troops cut through the heart of the Confederacy in what may be described as a campaign of "total war," war aimed at both combatant and noncombatant alike. During this campaign farms and plantations were burned to the ground, economic infrastructure

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was destroyed, towns, villages, and even cities were decimated, railroads were broken, and noncombatants as well as combatants were made to suffer by the Union troops. It was a total war aimed at the Confederate army, the Confederate infrastructure, and the society that supported the war effort. The goals were to defeat military forces and to break the will of the Southern peoples to continue fighting against the North. Thus, with houses and estates torched, livestock captured, railroad tracks and industrial infrastructure removed or made useless, the Confederacy as a whole was made to share its armies' pain. In September 1864, Sherman's army seized the city of Atlanta, Georgia, and despite his orders to restrict destruction to military sites, the city was destroyed. The city of Savannah, Georgia, suffered similarly in December of that year.

The same type of "total warfare" was conducted on the "Wilderness Campaign" of the North. The residents of Virginia's Shenandoah Valley (the bread basket of the Confederacy) suffered the ravages of war in both the campaigns of 1862 and 1863. As part of General Grant's two-pronged plan, a large Union army under the command of General Philip Sheridan was directed to move through the Shenandoah Valley. "I want Sheridan put in command of all the troops in the field," said Grant, "with instructions to put himself south of the enemy and follow him to death!" (McPherson 1996, 508). Sheridan directed a military campaign in the Shenandoah Valley that would leave it a barren wasteland. One of Sheridan's subordinate commanders, General David Hunter, capitalized on the total war language of his orders and directed a campaign of widespread destruction. This general left such a path of devastation behind him that his own troops called him "Black Dove." Sheridan's Shenandoah campaign was so destructive that one

soldier remarked, "Clouds of smoke marbled the passage of the federal army in [its] campaign through the Shenandoah" (McPherson, 509).

> Grant and Sheridan were striking directly at the Southern economy, and what happened to ... [Confederate General Jubal Early who led the Confederate army to the suburbs of Washington, D.C. and then retreated to the Shenandoah Valley] was more or less incidental; barns and corncribs and gristmills and herds of cattle were military objectives now, and if thousands of civilians ... had to suffer heartbreaking loss as a result, that also was incidental. A garden spot was to be turned into a desert in order that the Southern nation might be destroyed. (McPherson 1996, 495-496)

A similar campaign was waged against Native Americans and their main source of meat, the American buffalo. In 1867 General Philip Sheridan was placed in command of all army troops in the west. He was ordered to bring peace to the Great Plains and "subdue the Indians and place them on reservations" (Miller 1998, 2). The American buffalo were the life-blood of the Native-Americans, but were viewed as an impediment to expansion by the owners of transcontinental railroads.

When the transcontinental railroads were first built, the buffalo herds (60,000,000 head) were so large "that trains had to come to a dead stop right in the middle of the prairie. Sometimes they had to stop for a whole day to let the buffalo pass... [The railroads] hired commercial buffalo hunters to kill as many buffalo as they could" (Hargrove 1998, 2). These hunters, who ignored treaties made with the Native-Americans, all but exterminated the great buffalo herds by the year 1878. The disappearance of the buffalo further impoverished the indigenous peoples and forced them into a dependence on the federal government. The slaughter of the buffalo contributed to the animosity of the Native-Americans towards the military; between 1869 and 1876 there were 200 battles between soldier and Indians (Morison 1965, 751).

In 1869, on becoming President of the United States, Ulysses S. Grant selected

General Sherman to become the General of the Army and promoted Sheridan to the rank

of Lieutenant General. General Sheridan had a strategy to bring peace to the plains and

subdue the Native-Americans. Simply put, "He [Sheridan] planned to kill all of the

buffalo. The buffalo were sacred to the Indians for Indians lived off the buffalo. Sheridan

understood this dependence and said, kill the buffalo, and you kill the Indians'"

(Hargrove 1996, 3). His policies decimated the great buffalo herds in one of American

history's darkest episodes. Sheridan's policies destroyed the delicate balance of nature

and some of its most incredible gifts, the massive buffalo herds of the Great Plains, and

the nomadic tribes that inhabited those lands for thousands of years (Fisher 1996, 3).

Similarly, during the global wars of the 20th century, forests, waterways, and

some of the world's most valuable farmlands were destroyed in destructive global

conflicts harming millions of combatants and noncombatants:

> In the Pacific Theater, entire tropical islands, above and below the waterline, were
> denuded by both the Allies and the Japanese as an incidental consequence of
> conflict. Populations of indigenous birds and animals on many of these islands
> were rendered extinct. In the West, both the Germans and Allied armies destroyed
> much soil, binding vegetation in North Africa increasing both windstorms and
> desertification. (Fisher 1995, 2)

Some populations went so far as to damage their own ecologies so as to deny their use to

the enemy. The Norwegians, for example, used landslides to destroy their own fertile

valleys to deny their potential use to German occupiers. In a similar vein, the Dutch

destroyed their dikes to flood thousands of below-sea level acres, making German-usage

extremely difficult. Most devastation, however, was external in origin. During the

Vietnam War, for instance, thousands of acres of forests and wetlands were destroyed by

United States chemical defoliating agents; one of the most famous of these defoliating

agents is commonly called 'agent orange.'Toxic chemicals destroyed vegetation, wildlife, and water systems, besides causing disease to the unfortunate human inhabitants of those areas. Vietnamese and Americans exposed to these defoliants shared the same fate. They became vulnerable to cancers, their prodigy were more prone to develop birth defects, and many, to this day, suffer maladies that remain unidentified and therefore untreated.

During the Persian Gulf War, Iraqi military forces, in retreating from Kuwait, set fire to more than seven hundred oil wells. These fires, which in some cases lasted for months, destroyed five to six million barrels of oil a day, while releasing into the air carbon dioxide and sulfur dioxide, the same agents that make up acid rain. These harmful agents are also carcinogens. According to some reports, black snow and greasy rains fell on lands as far away as Pakistan and India. It took heroic oil workers more than eight months (258 days) to extinguish all the burning oil well fires after Desert Storm. The Iraqis also released some eleven million barrels of oil directly into the Arabian Gulf, killing or harming aquatic life. In addition, three hundred pools of oil, left in the desert, now contaminate more than 40 million tons of soil (Environmental Media Services 2002, 1-2). In sum, the dangers of ecological warfare, whether intentional or not, continue to harm noncombatants and combatants alike.

Since war negatively impacts the ecology of a region, the damage eventually harms the health of its inhabitants. As noted earlier, many modern weapons remain lethal long after their use. For example, residue from depleted uranium rounds (armor-piercing shells) releases uranium oxide into the air. This poisonous and radioactive product can cause stillbirths, childhood diseases, birth defects, leukemias, and other cancers in young and old alike. Some physicians and veterans of Desert Storm claim a connection between

America's use of depleted uranium rounds in Desert Storm and the mysterious, still undiagnosed disease that is commonly called "gulf war syndrome."

Radical ecological damage would most likely result from the use of weapons of mass destruction. For instance, the use of chemical, biological, radiological, or nuclear (CBRN) weapons could result in environmental destruction of apocalyptic proportions. Such a condition is described by the only man who ever ordered the use of nuclear weapons, President Harry S. Truman, in his 1952 State of the Union Address:

> The war of the future would be one in which man could extinguish millions of lives at one blow, demolish the great cities of the world, wipe out the cultural achievements of the past, and destroy the very structure of a civilization that has been slowly and painfully built through hundreds of generations. Such a war is not a possible policy for rational men. (Tucker 1960, 79)

References to discrimination and proportionality in regards to the use of these weapons usually mean the death and destruction of people and their property. No such restraint has been applied to the environment. So, the term "anything goes in war" might easily be applied to the world's one relatively unprotected victim, Mother Earth. One particularly severe example of war-caused environmental destruction is Afghanstan which has experienced non-stop war for almost thirty years.

In early 2002, Afghanistan and a special United Nations Commission took an accounting of war's toll on the Afghan people, national resources, politics, and environment. In September of that year the United Nations Environment Program (UNEP) went to Afghanistan to assess war's environmental damage and reported: "In some areas, the environmental circumstances are so poor that the recovery will probably not happen during our lifetime" (Environmental Media 2002, 1). After decades of war, the ecology of Afghanistan has suffered severe environmental damage that will only

begin to be restored when other countries contribute billions of dollars in aid and equipment to begin the process.

Why the total disregard, or at least relative unconcern for, the environment as regards to discrimination in war? The answer may be quite simple. In war, combatants do what they need to do in order to attain the military objective and stay alive. If defoliating a forest denies an enemy an edge in war, foliage will probably be eliminated. If the most effective anti-armor weapons are those treated with radio-active materials (like those tipped in depleted uranium), those weapons will most likely be used to gain the edge that will guarantee victory and save "friendly lives." How dangerous are these radio-active weapons, and how long will they continue to impact the environment? Capra offers a sobering thought on another radioactive substance, plutonium:

> Plutonium, the most dangerous of radioactive byproducts is also the most long-lived; it remains poisonous for at least 500,000 years. It is difficult to grasp the enormous length of this time span, which *far exceeds the length of time we are used to contemplating* within our industrial lifetimes, or within the lifetime of a society, nation or civilization. Half a million years ... is more than one hundred times longer than all recorded history. (1982, 245)

Military commanders will not place the lives of their troops in jeopardy to save a tree, a farm, or a forest. Nor will they reject a weapon that is proven to be effective, even if it possesses an after-life that may threaten human life or nature for generations.

Some effort is being made to address this issue. For example, the Naval publication, *Commander's Handbook on the Law of Naval Operations* (NWP 1-14M) states:

> [T]he commander has an ... obligation to avoid unnecessary damage to the environment to the extent that it is practicable to do so consistent with mission accomplishment. To that end, and so far as military requirements permit, methods or means of warfare should be employed with due regard to the protection and preservation of the natural environment. Destruction of the natural environment

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not necessitated by mission accomplishment and carried out wantonly is prohibited. (Boelaert-Suominen 2000, xvi)

While this requirement is a "prohibitor," a commander interested in saving the lives of his people or achieving a military objective may read this statement as justification for sacrificing the environment *if necessary*. International concern for the protection of the environment, as a relatively recent phenomenon, dates back to 1872 when the Swiss asked for international consensus to protect migratory European birds. It was not until the 1970s, however, that international environmental law gained momentum and international support, primarily because of economic concerns (Boelaert-Suominen 2000, 4). In 1982, the United Nations adopted a *World Charter for Nature*, but this document remains more an ethical guide than international law.

Until now, concerns for the environment have been anthropocentric rather than ecocentric. The discussion has traditionally centered upon the environment's relationship to humanity, and, until recently, it has not been considered a stand-alone concern. Because this human-centered focus has downplayed the environment, that same anthropocentric emphasis has influenced humanity's view of nature and war. The main focus of international law has been the rights and responsibilities of nation-states concerning their sovereignty, for instance, the ecologically damaging actions of one country against the ecology of another. In fact, "There is no commonly agreed definition of the concept 'environment' in international law. It is a term ... that everyone understands but no one is able to define; ... and there is as yet no uniform conceptual approach to environmental regulation" (Boelaert-Suominen 2000, 6-7).

Nevertheless, for the past few decades there has been some success in protecting the environment in war. For example, in July 1964, President Johnson of the United

States and the General Secretary of the Soviet Union, Nikita Khrushchev, agreed to discuss the dangers of using environmental modification techniques for military purposes. In August 1975, delegations from both countries attended a conference of the Committee on Disarmament, which produced a document entitled, *Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques*. This agreement states in part:

> The Convention defines environmental modification techniques as changing--through the deliberate manipulation of natural processes--the dynamics, composition or structure of the earth, including its biota, lithosphere, hydrosphere, and atmosphere, or of outer space. Changes in weather or climate patterns, in ocean currents, or in the state of the ozone layer or ionosphere, or an upset in the ecological balance of a region are some of the effects which might result from the use of environmental modification techniques. (Environmental Modification Convention 1977, 1)

Convention signatories have therefore agreed not to engage in environmental modification techniques that have long-lasting or severe effects. Another advance was made when the World Heritage Convention (adopted in 1972 under UNESCO auspices) identified "main inventories" of national and cultural heritage. This document directed countries "...not to take any deliberate measures which might damage directly or indirectly the cultural and natural heritage situated on the territory of other parties to the convention" (Boelaert-Suominen 2000, 17).

Thus, countries retain the right to control and regulate the exploitation of natural resources within their own territorial boundaries, while honoring their responsibilities towards the environments of other nation-states. There is, however, much to be done to protect the environment through the further development of an enforceable International Environmental Law. Nature deserves better attention and protection from her most threatening and destructive adversary, humanity.

These six contemporary issues are but a small sampling of the many issues challenging the existing definitions of discrimination and proportionality in *jus in bello* thinking. More issues will surely emerge in the years and decades ahead. This summary pinpoints the importance of keeping the dialogue and debate concerning this category of just war theory ongoing, and the definitions we use up to date in every generation. This attention to issues will ensure the relevance and applicability of a tradition that might help the countries that wage war and the warriors who must conduct them retain their humanity and sense of justice in the confusion and madness of war.

CHAPTER SIX:

CONCLUDING THOUGHTS

The military man rarely favors war. He will always argue that the danger of war requires increased armaments; he will seldom argue that increased armaments make war practical or desirable. He always favors preparedness, but he never feels prepared. Accordingly, the professional military man contributes a cautious, conservative, restraining voice to the formulation of state policy. This has been his typical role in most modern states including fascist Germany, communist Russia, and democratic America. He is afraid of war. He wants to prepare for war. But he is never ready to fight a war. ---Samuel P. Huntington, 1957

This dissertation began with the question: Has the theory of just war been replaced by international law, or does the theory still hold relevance for both those who declare wars and those who must fight in them? The author noted that the just war theory is a living, evolving doctrine; it is built upon the foundation of some of the world's most prominent ancient cultures; it is given form and substance in some of civilization's most formidable thinkers like Plato, Aristotle, and Cicero; it takes on structure as an independent theory in the writings of Augustine and Aquinas; and it received its current *jus ad bellum – jus in bello* structure in the days of the late scholastic writers like Vitoria and Suarez. "Theoretically, at least, the [just war] tradition placed war under the dominion of conscience and in doing so established the precept that 'right' was more important than 'might'" (Johnson 2001, 4). People in our day continue to apply just war principles to myriad contemporary scenarios and continue to reevaluate traditional just war criteria in light of contemporary changes.

Throughout history, just war theory has proven its value and relevance to the world. Despite the observation that it has been replaced by a universal code of

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international law, the theory still holds relevance and significance in our modern world. It

still offers guidance and insight to those who wage war and those who fight in wars. This

concluding chapter presents the author's suggestions for some issues and topics that call

for further discussion, debate, and scholarship in this critical area.

Warriors and Military Necessity

> *And who am I to say that they're not right? Who asked me for my opinion; who would listen to me? Surely you're not naïve enough to think that a soldier must approve of every detail of his government before he can fight for it? What army could exist like that with every man in it deciding what he would or wouldn't do? The truth is, a soldier has but one function in life, one lone excuse for existence and that is to carry out the orders of his superiors. The rest, including government, is politics, and I must remind you again, I'm a soldier, not a politician.*
>
> ---*Comments ascribed to Erwin Rommel*

The above remarks are taken from the screenplay of the 1951 Fox Studios' movie,

The Desert Fox. The comments, made by actor James Mason in his portrayal of General

Erwin Rommel, relate to his participation or non-participation in a plot to assassinate

Adolph Hitler. They are presented as a prologue to this section on warriors and military

necessity because they accurately portray some of the tensions experienced by

combatants in the fulfilling of their duties as warriors. First, they illustrate the tension that

exists in the soldier's dual role as citizen and warrior. Second, they highlight the gap that

sometimes exists between soldiers' view of themselves and society's view of them.

Society sometimes equates the soldier's uniform with a uniform mindset. This portrayal

of military personnel is inaccurate, for most are independent-minded. Third, it illustrates

the tension that sometimes exists between the warriors' responsibility to discern the

lawful nature of an order, and the soldier's duty to obey the order, despite the tensions

that sometimes exist between military necessity and ethical responsibility. This section

seeks to highlight some dilemmas faced by warriors in combat.

This portrayal of warrior as a complex moral agent differs significantly from the

portrayal of warriors by the author Laurie Calhoun in her article, "Just War? Moral

Soldiers":

> People fight wars in the name of nations. The uniform appearance of uniformed soldiers metaphorically displays the truth. It is not qua human being, thinker, rational agent, or sentient creature that a soldier kills an enemy soldier. Rather, soldiers kill soldiers in the same way in which they deactivate enemy mines and destroy storage and weapons facilities. ... Soldiers act as weapons against enemy soldiers, who are also acting as weapons. Soldiers qua soldiers are the tools of the leaders of nations. (Calhoun 2000, 6)

Rather than unthinking weapons or tools of nations, warriors are complex moral agents

who operate within the context of military protocol and duty. Constantly weighing the

legality of orders against the rules or laws of war, they must decide whether a given order

is lawful or not.

The concept of military necessity, especially as related to the *jus in bello*

principles of proportionality and discrimination, is complex. It possesses three distinct yet

interrelated-dimensions. First, no military action may be taken which is not considered a

military necessity. Military actions that cause undue destruction, death, or suffering are

prohibited by the law of armed combat. Second, the law of armed conflict sometimes

allows for exceptions to the principles of discrimination and/or proportionality for valid

military reasons, but these principles must never be disregarded or taken lightly (e.g., the

principle of double effect). Third, the practice of proportionate response in combat

attempts to balance the sometimes conflicting goals of achieving the military objective

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while remaining proportionate and discriminate in the conduct and fulfillment of military duties.

As previously discussed in Chapter Three, Michael Walzer examines the tension between military necessity and the law of armed conflict in terms of a *graduated scale*:

> The immediate issue is whether we should discriminate between soldiers fighting a just war and soldiers fighting an unjust war. It is, of course, those who claim membership in the first group who raise the issue, making what might be called an appeal against combatant equality. Though such appeals are particular in character, they have a general form. They all involve the claim that the equality I have been defending is merely conventional and that the truth about war rights is best expressed in terms of a sliding scale: *the more justice, the more right* ... The greater the justice of my cause, the more rules I can violate for the sake of the cause – though some rules are always inviolable. (Walzer 1977, 228-229 his emphasis)

In this context, the only kind of justice that matters is the justice of the cause, or the criterion specified in *jus ad bellum*. According to Walzer, some believe that "the only alternative to [this] sliding scale ... is a position of moral absolutism. To resist the slide, one must hold that the rules of war are a series of unqualified prohibitions, and that they can never rightly be violated to defeat aggression" (Ibid., 230).

Paraphrasing Walzer, warriors deal with the tensions that exist between the justice of war and just behavior in war in one of four ways: (1) they can ignore the rules of war completely and operate under the premise that anything is allowed to complete or achieve the military mission (necessity); (2) they can operate under the premise that the rules of war yield slowly and deliberately to the moral urgency of the cause, that is, the rights of the righteous take precedence over the enemy's rights; (3) they can operate in the spirit of moral absolutism, where no exception to the rules of war is allowed or tolerated; or (4) the law of conflict is overridden only in cases of extreme emergency or imminent catastrophe (Walzer 1977, 232).

FINAL THOUGHTS

Michael Walzer eventually argues against option (2). He suggests instead that warriors should operate under the principle outlined in option (4): that the conventions or laws of combat may be overridden only in times of imminent catastrophe. In this researcher's experience, there is moral value for warriors in option (2), the option rejected by Walzer. Moral warriors enter combat with an understanding of what is right and what is wrong, what the rights of combatants and noncombatants are, their rights as warriors, and their responsibility to keep focused on the ends or goals of war: the establishment of a just and lasting peace. For Walzer imminent catastrophe surpasses the ordinary tensions that warriors face on the field of combat. Combatants must continually weigh the achievement of military goals with following the principles of discrimination and proportionality, and thus some sort of sliding scale is virtually unavoidable.

Military leaders must continually weigh the protection they must afford noncombatants against the safety of their own troops (force protection). Should they use more force than necessary in order to accomplish the mission thus affording their troops a higher level of safety, or should they take risks that might ultimately jeopardize the lives of their own troops but in the process protect the lives of noncombatants? Using just the right amount of military force, affording just the right amount of protection to noncombatants and enemy infrastructure, or using just the right amount of military force against the enemy reflects the dynamic portrayed in option (2) more than that portrayed in option (4).

The principle of proportionality in *jus in bello* dictates that no more military force be used than is necessary to attain the military objective, and that a military operation is prohibited if another operation promises the same results with fewer deaths and lesser

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destruction. Warriors must decide when, where, or whether it is morally permissible to order an action that may cause the injury or death of noncombatants (double effect). Here, while distinguishing between direct and indirect harming of innocents in war, combatants must make every effort to protect the lives of noncombatants. Combatants are often forced to make these decisions in the chaos of war, sometimes with very little time, limited information, and almost no consultation. Despite these constraints, they must balance the goals of military necessity (those measures that are indispensable for securing the goals of war) with the principles of just behavior in war.

Combatants are not amoral agents or machines, as suggested by Calhoun's description above. They are not mere "weapons" to be placed in combat scenarios against enemy weapons of war. Warriors are human beings who operate with reason and usually with moral direction. They are rarely so focused or intent on completing the mission (military necessity) that they factor out human emotions like empathy and sympathy, even in the sometimes inhuman conditions of combat. And while soldiers must operate under orders, their professional duty is to study those orders so as to formulate the proper response, procedures, or tactics for fulfilling or challenging those orders. Soldiers submit to the authority of their superiors, but never so completely that they surrender or forfeit their moral personhood, legal responsibilities, or sense of honor. In fact, the character and motivation of the soldier often factor most significantly in the outcome of a military operation.

Drew Christiansen offers the following observation:

Truly, moral wisdom does not come easily. We should not be surprised that it takes time to learn to respond with principle to new circumstances. ... The moral life is not just a matter of applying existing principles to recurrent situations, and in doing so, to qualify old principles and to define new ones. It is also a *matter of*

learning how to do what we know we ought to do. (Christiansen 1999, 2
emphasis added)

Consequently, combatants must be trained in just war principles. President Abraham

Lincoln (1809 - 1865) understood the complex nature of a warrior's ethical and military

responsibilities when he asked Dr. Francis Lieber to prepare a code of law for combatants

in 1861 (Johnson 2001, 8). Lincoln understood that troops would need to be ethically

equipped to handle the complex situations they would face on the battlefield, to keep

them focused on the battle which, by their actions, contributing to the ultimate goal of the

war: the establishment of a just and lasting peace.

This principle has not changed from the days of Lincoln. Troops still need the

ethical training and education that will empower them to stay ethical on the battlefield

and contribute to the accomplishment of the ends of war. Providing troops with rules of

engagement is only part of the equation (see appendices). Training troops in just war

theory and key aspects of international humanitarian law will help them accomplish their

military objectives in line with international humanitarian law, and help them retain their

ethical focus and humanity in the chaos of war. It is therefore imperative that troops be

taught to understand where the rules of engagement have come from, as well as what they

are.

The Mindset of Warriors and Those Who Care for Them, and other Post Bellum Considerations

In his book, *The Ambivalence of the Sacred*, Scott Appleby notes that passionate

opposition to evil is a hallmark of people of faith who must take responsibility for the

conditions of life in their villages, towns, and cities. They must, when necessary, fight for the establishment of laws and social conditions "commensurate with human dignity" (Appleby 2000, 12). Quoting Bishop Desmond Tutu of South Africa, he calls such action a religious duty and states:

> Military defenders of human dignity may resort to violent resistance to evil – but they resort to violence under strictly limited conditions, Tutu insists, rather than embrace violence as the privilege of the righteous or as a divinely sanctioned means of achieving political goals. ... The religious peacemaker is committed primarily to the cessation of violence and the resolution of conflict: reconciliation or peaceful coexistence with the enemy is the ultimate goal. (Appleby 2000, 13)

Of primary importance here is a combatant's attitude toward violence and his understanding of its role in conflict. Appleby's recommendation that a believer should consider the primacy of motivation before engaging in conflict is not new. This view reflects the concerns of Saint Augustine and his appreciation of how war affected people.

Carl von Clausewitz compared war to a duel between nations: "War is an act of force to compel the enemy to do our will" (Clausewitz 1989, 75). Because the goal of the duel is to render an enemy powerless, sometimes deadly force is the technology used to accomplish this goal. Compelling the enemy to do our will usually results in bloodshed, destruction, and death. Moreover, noncombatants increasingly suffer the ravages of war, and many are wounded or killed (perhaps as many as 60 to 80 million or more in World War II) in this deadly struggle between nations. All persons, who are in some way involved as countries begin this conflict, must bring their personal resources to bear on their nation's conflict.

As mentioned earlier, children are rarely spared the ravages of war. In some cases, children take up arms themselves or are forced to fight the duel. Legal combatants are

forced to engage these forced or willing children on a field of battle. Deadly use of force against children threatens the life of those who should be protected from war. It also forever affects the lives and especially the mental state of those required to use deadly force against them. For the children who survive, their lives are irrevocably changed since their activity as combatants at such an early age severely distorts their view of themselves and the world around them. Much more needs to be done to protect these innocents so as to insulate them from the horrors of war. Combatants who are forced to use deadly force against children illegally conscripted into military service must later be deprogrammed to help them deal with their past actions.

While Augustine is usually credited with the creation of the just war theory as we know it, the reality is, that he was perhaps more concerned with *how war affected people* than with merely outlining the parameters of a just war. In his classic book, *The City of God*, Augustine addressed a Christian's dual responsibilities to the city of God and the city of men, believers and citizens must fulfill the obligations of both. These obligations create tensions, which often remain in conflict with each other. The dialogue between these sometimes opposing interests can influence those striving to co-exist in both the earthly and divine realms. As a modern scholar notes: "Politics, Christian or otherwise, is the art of compromise" (Appleby 1999, 41). Augustine, whose formulation of just war principles reflects this tension of living in both cities, offers a compromise formula to those serious about living up to the obligations of both: "Augustine's singular achievement [was] to provide an elaborate theological rationale for Christian participation in the affairs of the world, not least in its governance" (Ibid.).

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As has been stated, Augustine viewed war both as a consequence and remedy for sin. Therefore, whenever he referred to war, he did so with a tone of regret and sadness. For him, motivation played a key role in the determination of whether war was just or not. For him, war could never be waged out of spite or for revenge, for these were impure or evil motives. Augustine eloquently makes his case in his letter to Faustus the Manichean:

> What is the evil in war? Is it the death of some who will soon die in any case, that others may live in peaceful subjection? This is mere cowardly dislike, not any religious feeling. The real evils in war are love of violence, revengeful cruelty, fierce and implacable enmity, wild resistance, ... the lust of power, and such like; it is generally to punish these things, when force is required to inflict the punishment, that, in obedience to God or some lawful authority, good men undertake such wars, when they find themselves in such position as regards the conduct of human affairs, that right conduct requires them to act, or to make others act, in this way. (Cited in Paolucci 1962, 164)

In this letter to Faustus, Augustine reminds us that wars devastate both noncombatants and combatants, while deadly conflicts leave emotional scars that can last a lifetime. Modern society has ascribed many titles to this emotional scarring: *combat fatigue, battle trauma*, and most recently *post traumatic stress disorder* (PTSD). War leaves wounds that are visible and others, perhaps more, that are invisible. Augustine was concerned that in the chaos of war people run the risk of losing their humanity. In this concern, he shows us the heart and mission of a true military chaplain, for in the chaos and uncertainty of war, chaplains must help warriors retain their humanity and then help people deal with their visible and invisible wounds once the combat is terminated.

Reframing the Guidelines for the Presumption Against War

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The just war theory did not evolve as some sort of moral formula to offer precise guidance as to when it is just to declare wars or how to fight justly in wars. It was never developed as a "pre-flight" checklist prior to just war battle "take-off." "Rather, it is a kind of ethical calculus, in which moral reasoning and rigorous empirical analysis are meant to work together, in order to provide guidance to public authorities on whom the responsibilities of decision-making fall" (Weigel 2001, 1).

The *jus ad bellum* criterion of last resort holds that war should never be declared until every other avenue of statecraft and all other non-violent means are exhausted. Certain ecclesiastical leaders, like Pope Pius XII, have suggested that the only just cause for war is one that is defensive in nature, such as a war initiated to defend against the actions of an aggressor state. International law, which upholds the sovereignty of nation-states, prohibits other states from interfering in the internal affairs of any country. As noted earlier, these two views have been challenged by current events.

Late 20th century events in Somalia, Rwanda, and Bosnia challenge this limited perspective of sovereignty and application of just war principles. George Weigel reminds us that "the pursuit of justice is a moral obligation of statecraft" (Ibid., 2). Are there situations where sovereignty should be compromised? Are there situations where armed intervention might be just? Should countries stand by while crimes against humanity are committed in another country? Should they continue to conduct ordinary avenues of statecraft while Bosnian-Muslims are "ethnically cleansed," that is, murdered, by Serbian-Orthodox soldiers, or while Muslim airplanes bomb Christian villages in Southern Sudan? Should they continue to debate the issue of sovereignty while hundreds of thousands of innocents are butchered in genocidal attacks in Rwanda? Is national

sovereignty more important to Somalis than food when millions of their countrymen are starved by ruthless warlords and their militias? What about "rogue nations" that, possessing weapons of mass destruction, use them against their own citizens or threaten to use them against their neighbors?

Perhaps then it is time to shift focus in this issue from a presumption against the use of force or war to a presumption *for justice*. This shift would empower world leaders acting with the United Nations to act justly and expeditiously in situations where the lives of thousands, if not millions, hang in the balance. Perhaps it is time to revamp the theory of just war and develop criteria for a *theory of just intervention* so that justice is given the attention it deserves. In this case, justice receives equal weight with sovereignty while both are put in the context of real world scenarios.

As the 20th century was waning, intrastate bloodshed, insurrection, and terrorism were on the rise. The number of noncombatants killed in these conflicts reached staggering new levels. Perhaps prior public aversion to the use of force complicated world reaction by sending national and regional autocrats the wrong message. Perhaps aversion to the use of force continues to complicate world politics and impedes chances for a just and lasting peace. Karl Barth and Charles Curran have called war a final option or *Ultima Ratio* because it is essentially an unreasonable human activity, something to be avoided virtually at all costs (Cole 2001, 3). Both scholars feared that, if war were portrayed as anything but a horrid last resort, some might find it reasonably attractive as an option for those responsible for conducting statecraft. This is not to say that either scholar espoused a specifically pacifist position.

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In light of the developing need for just intervention, perhaps it is time to refocus on the Augustinian roots of the just war tradition: to recognize that war is both a product of and a remedy for sin. Caused by human selfishness and sin, war is then used to address those shortcomings. Augustine asks that war be conducted in a spirit of Christian love and justice, but Barth and Curran are right in warning that this mindset may lead to a cavalier spirit regarding the use of force, and result in more war and international conflict. To the contrary, Cole holds that this reaction may not be so:

> There is no reason to assume that simply because we believe that war can be a purposeful and reasoned activity that we will be inclined to engage in it too easily. In fact, defenders of Christian Just War doctrine typically argue that we ought to be reluctant to fight wars that lack sufficient moral and rational justification. Defenders of the tradition regret that they live in a world where they have to kill human beings in order to restrain evil; that is to say, they regret the fall. But they find it more regretful for Christians to stand idly by while people are being abused and killed unjustly. (Cole 2001, 3 emphasis added)

Thus the examples of Bosnia, Rwanda, Sudan, Somalia, and Iraq seem to call for a more intense focus on a discussion on the *presumption for justice*. In reality, there are just and unjust wars, as well as just and unjust applications of force. Force can sometimes be used to save life and/or create conditions for justice that prevents future conflict. The key to whether these actions are just or unjust may lie in the motivation for the use of force. If the motivation is love of neighbor with the goal of restoring peace, as suggested by Augustine, or the *agapic* principles outlined in the writings of Paul Ramsey, the use of force will more likely be just. In this researcher's opinion, nations have a moral responsibility to stop ethnic cleansing, genocide, mass starvation, or national threats before thousands upon thousands perish under a tyrannical rule. To act otherwise is to act irresponsibly.

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Inspired Tension

As discussed in Chapter Two, the post-apostolic age of the Christian Church experienced a tension between the schools of Christian pacifism and Christian realism. Some felt that believers should never resort to the use of force, while others held that force is sometimes morally justified and necessary. Called by their country to bear arms, many early Christians felt a tension between fulfilling the obligations of their faith and those of their citizenship. That same tension between Christian pacifists and realists exists today. In the opinion of this writer, that tension is healthy and creative, a constructive dynamic that serves both the Christian community and the world-at-large. This tension has sparked a dialogue and debate about war that has been carried on for millennia. One result of this discussion is the theory of just war, which, by narrowing the parameters of war-making, has helped define right conduct in war.

In essence, this inherent tension between pacifism and realism, which can be seen as inspired, has helped us remain faithful to our obligations as Christians and as citizens. It helps us focus on building the kingdom of God while conducting affairs justly in the realms of humanity. Augustine's original intent in proposing a just war theory was to help Christians balance their responsibilities to God with those of the state. Today the tension that exists between pacifism and realism provides a dynamic that keeps believers honest to the obligations of both worlds.

Where do we head from here? As argued in the preceding section, over the past few decades the world has been moving from a theory of *just war* to the formulation of a

new theory of *just intervention*. In addition, the tragic events of September 11, 2001, the growing threat of terrorism and the proliferation of weapons of mass destruction by rogue nations or by political and religious movements has led to the discussion of a new category that some call *just pre-emption*. Whether pre-emptive strikes may or may not be just is not a topic that can be adequately discussed here. It is, however, a topic that needs further discussion, clarification, and development. Perhaps the dynamic and creative tension that exists between pacifism and bellicism will lead us to a solution that empowers us to handle the crises of tomorrow in a just and equitable way that will serve the needs of all.

Response to Fundamentalism

An issue that has heightened interest in just war theory is how to deal with fundamentalism, particularly of a religious kind. Fundamentalism can be defined as "a movement or point of view marked by rigid adherence to fundamental or basic principles" (Soukhanov and Ellis 1988, 512). It is important to note that there is no reference to religion in this definition of fundamentalism, although common practice links the two. The term fundamentalism may be applied to diverse forms of belief or behavior. When fundamentalism refers to governmental systems, it is labeled *secular or political fundamentalism*. This title, which applies specifically to totalitarian systems of government such as Fascism or Nazism, or it can be used to describe socialist systems, insurgencies, or even terrorist movements such as Peru's *Shining Path*.

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The term may also be applied to the mindset of an historical era. For example,

during the scientific age, also called the *Age of Modernism,* the term coined was *scientific*

fundamentalism. The mindset of this age of "scientism" has been analyzed by Scott

Appleby and Martin Marty, who described its historical mindset as follows: "Empirically

based knowledge is the only reliable way of knowing reality" (2002, 16). Fritjof Capra

traced the origin of this viewpoint to René Descartes (1598-1650):

> The belief in the certainty of scientific knowledge lies at the very basis of
> Cartesian philosophy and of the worldview derived from it, and it was here, at the
> very outset, that Descartes was wrong. Twentieth-century physics has shown us
> very forcefully that there is no absolute truth in science, that all our concepts and
> theories are limited and proximate. The Cartesian belief in scientific truth is still
> widespread today [scientific fundamentalism] and is reflected in the scientism that
> has become typical of our Western culture. (Capra 1982, 57)

Finally, the term fundamentalism may be used in regard to religious belief, and in

this context, it is labeled *religious fundamentalism.* R. Scott Appleby and Martin E.

Marty co-directed *The Fundamentalist Project* from 1988 to 1993. The project consulted

more than one hundred experts in fundamentalist movements. In Appleby and Marty's

view, fundamentalism transcends faith groups, economic status, and political or

geographic factors. They state that fundamentalist movements surface "anywhere people

perceive the need to fight a godless, secular culture --even if they depart from the

orthodoxy of their traditions to do it" (Appleby and Marty 2002, 16). Some of the more

prevalent characteristics of those espousing religious fundamentalism are as follows:

> [Religious fundamentalists] draw lines in the sand, demand unconditional
> obedience from the rank and file, expend enormous energies maintaining
> boundaries between the pure and impure, build impenetrable dogmatic fortresses
> around 'the truth,' and see their version of it as absolute, infallible, or inerrant.
> (Ibid.)

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Religious fundamentalists believe that their authority and direction comes directly from

God. This view divinizes their ideology and cause, allowing them to raise their agenda

above the mundane dialogue and observations of ordinary people. Pope John Paul II

warns of the dangers of religious fundamentalism in *Centesimus Annus*:

> Nor does the church close her eyes to the danger of fanaticism or fundamentalism
> among those who, in the name of an ideology that purports to be scientific or
> religious, claim the right to impose on others their own concept of what is true
> and good. *Christian truth* is not of this kind. (John Paul II 1991, #46).

Since the tragic events of September 11, 2001, the world has focused much of its

attention on the rise of Islamic fundamentalism and its impact on world affairs. What is

the agenda of the Islamic fundamentalists (if, in fact, they have a single agenda)?

According to Johnson and Sampson: "In general, Islamic fundamentalists seek to take

over Muslim countries in order to revolutionize their societies" (1994, 28). Throughout

the Middle East, Africa, and Asia, thousands of devout Muslims are dedicated to

returning their societies to the dictates of (fundamentalist) Islam and toppling

governments that they view to be corrupt, godless, and repressive. Their belief is that

these governments rule in the guise of Islam while ignoring the basic tenets of its beliefs.

Political currents from this movement have been felt profoundly in the West in the events

of 9 / 11 / 01:

> Desperate but capable men ... joined the ranks of transnational *mujahedin* – the
> Islamist 'freedom fighters' dispatched to Afghanistan in the 1980s to thwart the
> godless Soviet invaders. The graduates of that campaign made their way into the
> ranks of *al Qaeda*, Islamic *Jihad*, and other terrorist networks. (Appleby and
> Marty 2002, 20)

Islamic fundamentalism is a form of political and religious insurgency. It aspires

to replace the political or religious status quo with a conservative, anti-Western theology

and worldview. What is the best way to address this or any insurgency? Is insurgency best checked by the use of force, by secret police, or by governmental surveillance tactics? While such repressive means can keep such a movement temporarily in check, they are rarely successful in the long run. The first question that needs to be asked is, "Why does the insurgency exist?" Has the movement gained power, prestige, and converts because society has failed to provide people with representative government? Do people lack the necessities of life like food, clothing, shelter, and education? Have people lost confidence in a government, regime, or system's ability or willingness to meet its needs and provide for the future?

Perhaps the best way to address insurgency is by analyzing what led to it and then to work to provide those needs. If the conflict is ideological in nature, honest discussion of the issues might forge new avenues of dialogue and understanding. Dialogue could be held on issues of war and peace, specifically on principles leading to an understanding of what constitutes just war and just behavior in war. Islam's own theory of just war in many ways parallels the Judeo-Christian just war tradition.

While some Islamic fundamentalists do place more emphasis on the concept of *jihad* as holy war, most Muslims view and translate *jihad* more in terms of struggle: a personal, communal, and national struggle to draw closer to Allah through the practice of Islam. The temptation to label Islam "a religion of war," while very strong in light of the terrorist events of 9/11/01 and those of Bali, Beirut, Kenya, and Tanzania, must be resisted. President George W. Bush, for one, has tried to counter this perception of Muslims as terrorist or terrorist sympathizers, and he has met often with Muslim leaders to highlight issues of common interest to Americans of all faiths. Present at religious

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ceremonies to mark the end of Ramadan (*Eid al-Fitr*), the president used the occasion to call for further dialogue and understanding:

> [The feast of] *Eid* celebrates the renewal of faith, hope, and compassion. During this time of great rejoicing, Muslims give thanks for the blessings they have been granted, and demonstrate their commitment to the Qur'an's teachings by helping those in need. These acts of kindness and generosity strengthen communities worldwide, and as we observe this holiday season, I encourage Americans of all faiths to join in building a culture of service that demonstrates the true character of our nation. ...By working together to advance mutual understanding, we point the way to a brighter future for all. (Bush 2002, 1)

It is important to recognize that fundamentalism exists in most faith groups and denominations. Fundamentalism has been a strong and fast-growing facet of American Protestantism since the 1920s when Curtis Lee Laws first coined the term. The West Bank settlers of *Gush Emunim* in Israel make up one of the strongest fundamentalist groups in Judaism, and the adherents of *Sangha* in Sri Lanka profess belief in a popular form of Buddhist fundamentalism. Similarly, some view *Opus Dei* as a fundamentalist movement in Catholicism. In sum, expressions of fundamentalism are found in most major religions of the world.

Jus Post Bellum

All major just war theorists outline their presentation or theory of just war in terms of two major categories, *jus ad bellum* (valid reasons for waging war) and *jus in bello* (principles of behaving justly in war). Although some of these criteria point indirectly to the goals of war, particularly to the establishment of a just and lasting peace, the theory of just war should include a third category directly outlining the criteria for the post-war stage of conflict: *jus post bellum*, or justice after war.

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The events following World War I illustrate the importance of establishing a separate category of just war theory that deals directly with the post-hostility stage of a war:

> The definition of war aims proved divisive among and within nations. The French demands were deceptively reasonable: they wanted the restoration of Alsace-Lorraine that only a defeated Germany would yield; the English vowed to destroy Prussian militarism and terminate the German threat to the European balance of power. Colonial gains would be incidental rewards. Germany harbored the most ambitious war aims which would have, in fact, established her as the hegemonial power in Europe, hence, a world power in England's place. (Garraty and Gay 1972, 988)

All sides in the war lacked a viable vision for a just war termination. Almost eleven million people died in World War I, and at least twice that many were wounded. Certainly, the horrors of the war affected the hearts, minds, and politics of all who survived the horrors of this first global war.

On June 28, 1919 the Treaty of Versailles was signed, thus ending the First World War. Germany gave up some of its most valuable territories and had to place the Rhineland under an allied protectorate for fifteen years. She had to incur the cost of this occupation and pay enormous war reparations to the victors, and all this under the supposedly enlightened rule of the newly created League of Nations. In fact this treaty failed to foster a just and lasting peace, creating the conditions that eventually led to economic chaos, wounded nationalism, and the birth of totalitarianism in Europe.

Wars should always be fought with a focus on the primary goals of war: war termination and peace restored. These aims lead to just conduct in war, while guarding against the destructive revengeful spirit that Augustine warned about centuries ago. War termination and all such post-war activities must include provisions for goals such as an

honorable surrender, the rebuilding of the societies affected by war, the responsibility to

return the battlefields to pre-war pristine conditions, and a spirit of regret and

reconciliation on all sides. These elements lead to the potential creation of a just and

lasting peace, the only just reason for initiating war in the first place. American initiatives

after World War II in both Europe and Japan, generally illustrated an enlightened *post-*

bellum mentality and the utility of what should be the third major category of just war.

The *post-war* confusion shown in regard to Iraq, 1991-2002, negatively illustrates the

need to have post-war treaty goals in mind, even before conducting hostilities.

The Efficacy of Building a Culture of Peace

This dissertation has defended the utility of the just war theory and its relevance

for the 21st century. It contends that the military should teach the principles of just war to

those who must plan and fight wars. The rules of engagement currently seem too broad in

scope and narrow in direction to prepare warriors adequately for decision-making in the

chaos and uncertainty of war. Knowing how these rules have evolved and the spirit in

which they are given will help them to comprehend and apply better such principles as

proportionality and discrimination. This rudimentary understanding of the law of war

empowers them to balance the requirements of military necessity with those of *jus in*

bello requirements. While not an exclusive factor, this goal should help them complete

their mission with a level of humanity that affects all belligerents, helping to result in a

just and lasting peace.

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For those who initiate wars, however, just war principles should be the start, not the end, of their discernment process. Knowing the parameters of what makes a war just should only be the beginning of a discussion on issues regarding peace and war. Nation-states should also consider how war and its pre-conditions might be avoided altogether. Long before any discussion of just war is undertaken, the process of creating the conditions for the establishment of a just and lasting peace should take place, for it is not always necessary to resort to war to create these conditions for peace. The Roman Legions were first to use the motto: *"Si vis pacem, para bellum"* (If you want peace, prepare for war). With the creation of weapons of mass destruction and an increase in intrastate conflicts and insurgencies since the collapse of the bipolar world, it may be more appropriate to adapt a new motto for the 21st century: *"Si vis pacem, para viam pacis"* (If you want peace, prepare the way of peace). Not everyone, of course, will agree on how to prepare for peace:

> The horror of modern warfare and the success of some non-violent movements for social change sharpened the theological debate between pacifists and just war theorists during the 20th century. Glen Strassen, a Baptist theologian, thinks this [just war] debate has become so exacting as to be a distraction for Christian citizens faced with the demands of justice and peace in the contemporary world. (Thompson 2001, 85)

As stated, a healthy tension has existed throughout the history of the church between pacifism and bellicism, resulting in a Christian school of realism. The result of this tension is the compromise position called the theory of just war. The just war tradition has sparked healthy dialogue between proponents of peace at any cost and proponents of war for legitimate purposes. This compromise has narrowed the parameters for a just waging of war and rules for behavior in war that lead to peace. Although the

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theory of just war has served us well for centuries, it may now be time to supplement just

war theory with a new paradigm: a theory of *just peacemaking,* or creating the conditions

for peace. This is not to suggest that just peacemaking should replace just war theory, but

it may be time to place more emphasis on creating conditions which help diffuse crises

before they evolve into military contingencies.

      The just peacemaking concept broadens the discussion of just war theory. Just

peacemaking is focused both on ending hostilities once they have begun and on

eliminating the sources of conflict before wars begin. Like the papal encyclical

Populorum Progressio, it highlights the importance of development as a condition for

peace. By placing a fresh and necessary emphasis on solidarity and justice, it turns the

discussion from the justice of conflict to the justice of conditions before conflict starts.

      Theorists like Glen Strassen, Ron Sider, and J. Milburn Thompson view just

peacemaking as the responsibility of all who profess to be disciples of Jesus Christ. They

offer just peacemaking as a paradigm that moves to a new level the dialogue between just

war realists and pacifists. This dynamic has the potential of bridging both poles of the

spectrum, and incorporating all believers in the process:

> Discipleship calls Christians and the church to make peace, that is, to take risky
> initiatives aimed at transforming enmity and conflict into friendship and peace. ...
> Second, justice is an imperative for a Christian ethic. Christians and Christian
> communities must work for justice, heal the brokenness of the world, and promote
> human rights. ...Third, the Christian community should build community through
> love and co-operation. Such community building is both local and global.
> (Thompson 2001, 85)

      This proactive dynamic recognizes that peace is more than the absence of conflict.

Peace is, in fact, a condition of justice and equity affording all a hope in the future. Pope

Paul VI linked the prospect for just and lasting peace with progress for all peoples:

> Peace is not simply the absence of warfare, based on a precarious balance of power; it is fashioned by efforts directed day after day toward the establishment of the ordered universe willed by God, with a more perfect form of justice among men. ...The injustice of certain situations cries out for God's attention. Lacking the bare necessities of life, whole nations are under the thumb of others; they cannot act on their own initiative; they cannot exercise personal responsibility; they cannot work toward a higher degree of cultural refinement or a greater participation in social and public life. They are sorely tempted to redress these insults to their human nature by violent means. (Pope Paul VI 1967, 21-22)

Pope Paul VI, who goes so far as to call *development* the new name for *peace*, explains that true human progress requires nations of the world to work together to create those just conditions that diffuse crises, insurgencies, and the tensions in the ever-widening gap between the have and have-nots of this world. He asks that current world conditions be faced with courage, and that the injustices linked with it be fought against and overcome. Pope John Paul II explains that human development "...demands bold transformations, innovations that go deep" (Pope John Paul II, 21). He states these reforms to be urgently needed if we are to avert revolution.

Just peacemaking, therefore, affords us a proactive way to create a just and lasting peace, without a resort to deadly conflict. Just peacemaking should be further developed in the just war criterion of last resort. Civil groups such as non-governmental and international organizations (NGOs-IGOs) should be included in international efforts in peace-building and nation-building to help avert war and build a just and lasting peace.

Final Thoughts

When the countries of Europe initiated hostilities at the outbreak of World War I (1914-1918), they thought that the war would be relatively short and fought with minimal

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loss of life. The Germans "realizing that they were likely to face a two-front war, attempted to defeat the western foes [quickly and decisively] ... using their Schlieffen Plan" (Rosenberg 2002, 2). The French, Belgian, and British forces were able to halt the German advance, defeat their plans, and create a stalemate that led to the long and bloody trench warfare of World War I.

The warfare of the first months was fierce and deadly. Between August and December 1914 "more than a million men had been slaughtered, and frozen bodies lay strewn between the lines" (Mackay 2001, 2). Sometimes the trenches of the enemy were no further than 60 yards apart, and it was not uncommon for troops to converse between trenches and even entertain one another with song. This unauthorized chat evoked the anger of the senior military leaders who demanded that the troops maintain an "offensive spirit" and refrain from all friendly intercourse with the enemy. On December 7, 1914, Pope Benedict XV suggested a 'Christmas Truce,' but the Germans were the only country to agree to the Pontiff's call for a cease-fire (Rosenberg 2002, 3).

On Christmas Eve 1914, all British units in France and Flanders received the following message from the leadership of the British Second [II] Corps [Sir John French]: "[As] the enemy may be contemplating an attack during Xmas or New Year, special vigilance will be maintained during these periods" (Morgan 2001, 1). Ordinary soldiers, however, behaved with humanity as Captain Stockwell of the Royal Welsh Fusiliers records the events of Christmas, 1914:

> It froze hard on Christmas Eve, and in the morning there was a thick ground-fog. The Saxons opposite had been shouting in English. Strict orders had been issued that there was to be no fraternizing on Christmas day. About 1:30 P.M., having seen our men get their Christmas dinners, we went into our shelter to get a meal. The sergeant on duty suddenly ran in and said the fog had lifted and that a half-dozen Saxons were standing on their parapet without arms. I ran out into the

trench and found that all the men were holding their rifles at the ready on the parapet, and the Saxons were yelling, 'Don't shoot!' We don't want to fight today. We will send you some beer.' A Cask was hoisted onto the parapet and three men rolled it into the middle of No-Man's Land. (Morgan 2001, 6)

Thus began an "unofficial truce" that was to be observed in military units throughout Europe. The dialogue between enemy troops gradually evolved into a hymn-fest. The Germans sang *O Tannenbaum* and the English responded with verses from *O Come All Ye Faithful*, then both sides joined in singing *Adeste Fideles*. Joint field services were held, services marking the birth of Jesus and commemorating the dead on both sides. The men from all sides shared food, clothing, and other articles of comfort. By that Christmas night, when hostilities were once again initiated, most agreed, it was a remarkable way to spend Christmas Day: " 'Just you think,' wrote one British soldier, 'that while you were eating your turkey, I was out talking and shaking hands with the very men I had been trying to kill a few hours before. It was astounding'" (Richards 1998, 1-2).

The Christmas Armistice of 1914 is not a unique event in the history of warfare. During both the Peninsula War (1808-1814) and the Crimea War (1854-1856) troops stopped fighting long enough to gather around campfires, share food and drink, smoke, sing, and enjoy the company of one another. During the American Civil War (1860-1865) Union and Confederate soldiers "traded tobacco, coffee and newspapers, fished peacefully on opposite sides of the same stream and even collected wild blackberries together" (Richards 1998, 3). These episodes clearly illustrate that warriors were able to retain their humanity and charity despite the chaos and inhuman conditions of combat.

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Warriors are sometimes stereotyped as death seekers who welcome the opportunity to fight as thrilling and thirst for the dangers of combat. They are sometimes portrayed as individuals who seek opportunities to test and sharpen combatant skills and utilize their military technology. In reality, most military persons are men and women of peace who will willingly, yet reluctantly, put their lives on the line to defend their country and countrymen against enemies both foreign and domestic. These combatants willingly accept the sacrifice of long months of separation from family and friends amid the constant threat of death to fulfill their military responsibilities. They are individuals who would much rather serve in humanitarian and peacekeeping operations that save lives, than in combat operations that take lives. These men and women stand ready to contribute to any operation furthering the national *defense* of the country, yet question any role or mission that uses them in an 'offensive' way.

This dissertation has been a labor of love. It should now be obvious that its author believes that the just war tradition offers an ancient yet relevant theory that still evolves in response to the historical, political, social, and technological forces at work in the world. Given the nature of these potent forces, the time has come to place less emphasis on the presumption against war and more on the presumption of justice. It is also important to note that a new category of just war theory should be developed and given a larger role in just war discussion, the category of *jus post bellum*, the concept of post-war justice. These concepts beg for further academic research and development in the decades to come. They demand attention and further development by specialists in many disciplines: philosophers, theologians, lawyers, politicians and statespersons, for these developments might ultimately avert wars and help in bringing a just and lasting peace to

the nations. Such was the dream of Isaiah the prophet, a dream offered to all the peoples

of the earth:

> In the days to come, the mountain of the Lord's house shall be established as the highest mountain and raised above the hills. All nations shall stream toward it; many peoples shall come and say: 'Come, let us climb the Lord's mountain, to the house of the God of Jacob, that he may instruct us in his ways, and we may walk in his paths.' For from Zion shall go forth instruction, and the word of the Lord from Jerusalem. He shall judge between the nations, and impose terms on many peoples. They shall beat their swords into plowshares and their spears into pruning hooks; one nation shall not raise the sword against another, nor shall they train for war again. O house of Jacob, come, let us walk in the light of the Lord. (Isaiah 2: 2-5)

APPENDIX A

UNITED STATES ARMY FIELD MANUAL 27-100:

LEGAL SUPPORT TO [MILITARY] OPERATIONS: (CHAPTER EIGHT: RULES OF ENGAGEMENT)

PURPOSE OF APPENDIX A: THIS APPENDIX IS OFFERED TO READERS TO ILLUSTRATE THE DEVELOPMENT AND UTILIZATION OF RULES OF ENGAGEMENT IN MILITARY OPERATIONS. CHAPTER EIGHT OF FM 27-100 IS A COMPREHENSIVE LOOK AT RULES OF ENGAGEMENT AND HOW THESE RULES ARE FORMULATED BY THE MILITARY SERVICES. THE AIR FORCE, MARINE CORPS, AND NAVY ISSUE SIMILAR PUBLICATIONS.

*FM 27-100
1 March 2000

Legal Support to Operations

Chapter Eight:
Rules of Engagement

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HEADQUARTERS, DEPARTMENT OF THE ARMY

Legal Support to Operations

Chapter 8 Rules of Engagement

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*War is tough, uncompromising, and
unforgiving. For soldiers, the rigors of battle demand mental and physical toughness and
close-knit teamwork. Between the anxiety of battle, soldiers spend long hours doing
routine but necessary tasks in the cold, wet weather and mud, moving from position to
position, often without hot meals, clean
clothes, or sleep. In war, the potential for breakdown in discipline is always present. The
Army operates with applicable rules of engagement (ROE), conducting warfare in
compliance with international laws and within the conditions specified by the higher
commander. Army forces apply the combat power necessary to ensure victory through
appropriate and disciplined use of force.*

Field Manual 100-5, Operations

*It is not uncommon in MOOTW, for example peacemaking, for junior leaders to make
decisions which have significant political implications. Joint Publication 3-07, Joint
Doctrine for Military Operations Other than War.*

8.1 INTRODUCTION

OPLAW provides vital links between the strategic and tactical levels of conflict. The strongest of these links are often rules of engagement (ROE). ROE enable mission accomplishment, force protection, and compliance with law and policy. While ROE are always commanders' rules, the interpretation, drafting, dissemination, and training of ROE are also the business of OPLAW JAs.

Every chapter of this manual records the importance of ROE to the practice of OPLAW. ROE integrate many of the six disciplines of legal support to operations and epitomize the counselor function of OPLAW JAs. Development of expertise with ROE is a prominent duty and responsibility of SJAs. Involvement with ROE places judge advocates firmly within the command and control of operations. Theater operations implement the ROE established by Commanders in Chief (CINCs) of combatant commands. Corps and Division Deep Operations Coordination Cells (DOCCs), or Information Operations Cells of the future, rely upon OPLAW JAs to incorporate ROE considerations into the targeting process. Military operations other than war (MOOTW) tend to be characterized by ROE demanding greater restraint in applying combat power, a factor that creates great challenges for judge advocates deployed with forward brigade task forces.

**8.2 ROE DEVELOPMENT
CONSIDERATIONS**

8.2.1 Commander's Responsibility

ROE are commanders' rules for the use of force. Operations personnel are principally responsible to ensure that the ROE further operational requirements. OPLAW JAs assist the commander to interpret, draft, disseminate, and train ROE because all ROE must conform to international law, because a Department of Defense Directive and service regulations give military attorneys a role in ROE compliance, and because the Chairman of the Joint Chiefs of Staff has directed that attorneys will review all operations plans and participate in targeting meetings of military staffs. Also, the Hague and Geneva Conventions contain dissemination provisions that encourage the involvement of judge advocates in ROE matters. A provision of the 1977 Protocol I to the 1949 Geneva Conventions—which though not ratified by the United States is considered declarative of customary international law on this point—expressly mentions the role of "legal advisors."

8.2.2 Purposes of ROE

ROE are driven by three sets of considerations: policy, legal, and military. An example of a policy-driven rule is *Executive Order 11850*, which prohibits first use of riot control agents and herbicides without Presidential approval. An example of a legal-driven rule is the prohibition, "hospitals, churches, shrines, schools, museums, and any other historical or cultural sites will not be engaged except in selfdefense. An example of a militarydriven

rule is the commonly encountered requirement for observed indirect fires for the purpose of effective target engagement. ROE are *not* the same as fire control measures. Fire control measures are implemented by commanders based on tactical considerations. An example of a fire control measure serving tactical purposes is the common requirement in ground operations that the artillery tubes organic to a unit will not fire beyond a designated fire support coordination line (FSCL); this ensures an efficient division of labor between fires controlled at one level and those controlled by higher levels of command. Moreover, it helps prevent fratricide by indirect fire. The purposes of ROE quite often overlap; rules implementing strategic policy decisions may serve an operational or tactical military goal while simultaneously bringing U.S. forces in compliance with domestic or international law. As a result, troops in the field may not always appreciate the reasons why a leader fashioned a particular rule. ROE must evolve with mission requirements and be tailored to mission realities. ROE should be a flexible instrument designed to best support the mission through various operational phases and should reflect changes in the threat.

8.2.3 Drafting Considerations

Operational requirements, policy, and law define ROE. ROE always recognize the soldier's right of selfdefense, the commander's right and obligation to self-defense, and America's national right to defend itself and its allies and coalition partners against aggression. In the *Standing Rules of Engagement (SROE)* for U.S. Forces, the Joint Chiefs of Staff provide baseline guidance and procedures for supplementing this guidance for specific operations. Effective ROE are enforceable, understandable, tactically sound, and legally sufficient. Further, effective ROE are responsive to the mission and consistent with unit initiative. In all operations, ROE may impose political, operational, and legal limitations upon commanders. Withholding employment of particular classes of weapons or exempting the territory of certain nations from attack are examples of such limitations. At the tactical level, ROE may extend to criteria for initiating engagements with certain weapon systems (for example, unobserved fires) or reacting to attack. Effective ROE comply with domestic and international law, including the body of international law pertaining to armed conflict. Thus, ROE never justify illegal actions. In all situations, soldiers and commanders use force that is necessary and proportional. Effective ROE do not assign specific tasks or drive specific tactical solutions; they allow a commander to quickly and clearly convey to subordinate units a desired posture regarding the use of force. In passing orders to subordinates, a commander must act within the ROE received. However, ROE never relieve the commander from his responsibility to formulate the end state, objectives, mission, and other elements of operational design. Commanders at all levels continually review the ROE to ensure their effectiveness in light of current and projected conditions in their area of operations.

8.2.4 Situation Considerations -

METT-TC

A given operational setting is described by the factors of mission, enemy and threat, terrain and weather, troops, time available, and civilian considerations (METT- TC). The situation is the context that dominates every aspect of planning, including ROE. Across the range of potential military operations, commanders can encounter situations of bewildering complexity. This complexity is reduced, at the operational and tactical levels of conflict, by applying the conceptual template of METT-TC.

Mission establishes the purpose of the operation.

Planners must consider the dispositions, equipment, doctrine, capabilities, and probable intentions of an *Enemy*—actual and potential. The current conflict environment is increasingly characterized by shades of gray in which enemies are less apparent. Commanders also evaluate potential threats to mission success, such as disease, political instability, and misinformation.

Terrain and weather affect mobility, concealment, observation, cover, avenues of approach, and the effectiveness of military operating systems.

The commander must consider the nature of *Troops*—his military capabilities. Troop characteristics such as numbers, mobility, protection, training, and morale influence plans for their employment.

Time available for preparation and execution of the mission is critical and can dramatically influence the scope and nature of the plan.

Civilian considerations are a key factor of the situation across the entire range of operations. Attitudes and activities of the civilian population in the area of operation influence the outcome of military operations. Refugees and humanitarian assistance requirements are frequent concerns, not only in stability operations or support operations, but also in conventional combat. Interagency operations bring to bear the civilian resources of DoD, non-DoD components of the government, and private voluntary and nongovernmental organizations, thereby multiplying the effectiveness of our operations.

M—Mission

E—Enemy (and threat)
T—Terrain (and weather)
T—Troops

T—Time Available
C—Civilian Considerations

8.2.5 Definitions and Key Concepts

ROE are defined in *Joint Publication 1-02* as "directives issued by competent military authority which delineate the circumstances and limitations under which United States forces will initiate and/or continue combat engagement with other forces encountered." A few examples illustrate the broad range of rules that fall within this definition: requiring

an F-111 crew to confirm that all target acquisition systems are operable to bomb a Libyan barracks abutting a civilian population center; prohibiting entry by U.S. Navy ships into territorial seas or internal waters of a neutral nation; or authorizing an infantryman at a guard post to use deadly force against saboteurs of missionessential equipment.

Wartime Versus Standing ROE.

In general, ROE differ in wartime to reflect the increased justification for using force. Wartime ROE permit U.S. forces to open fire upon all identified enemy targets, regardless of whether those targets represent actual, immediate threats. By contrast, the SROE, which will be discussed later in this chapter, merely permit engagement in individual, unit, or national self-defense. Most legal grounds for international use of force during peacetime are traceable to selfdefense. Wartime ROE are familiar to units and soldiers because battle focused training concentrates on wartime tasks. Individual Army privates and officer trainees in all occupational specialties receive instruction and undergo evaluation on basic wartime rules, such as "attack only combat targets" and "do not destroy property unless required by the necessities of war." In war, national leaders will seek to make the ROE no more restrictive than international law.

Necessity and Proportionality.

The principles of necessity and proportionality help define the peacetime justification to use force in self-defense and are thus fundamental to understanding ROE for MOOTW. The necessity principle permits friendly forces to engage only those forces committing hostile acts or clearly demonstrating hostile intent. This formulation—a quite restrictive rule for the use of force—captures the essence of peacetime necessity under international law. In 1840, Secretary of State Daniel Webster articulated the essence of the necessity rule. He wrote that use of force in self-defense is justified only in cases in which "the necessity of that selfdefense is instant, overwhelming and leaving no choice of means and no moment for deliberation." The rule of necessity applies to individuals as well as to military units or sovereign states.

Definitions of "hostile act" and "hostile intent" complete the meaning of "necessity." A *hostile act* is an attack or other use of force. *Hostile intent* "is the threat of imminent use of force." The precise contents of these definitions become sensitive when the ROE describe specific behaviors as hostile acts or equate particular objective characteristics with hostile intent. For instance, the ROE might define a foreign uniformed soldier aiming a machine-gun from behind a prepared firing position as a clear demonstration of hostile intent, regardless of whether that soldier truly intends to harm U.S. forces.

The principle of proportionality requires that the force used be reasonable in intensity, duration, and magnitude, based on all facts known to the commander at the time, to decisively counter the hostile act or hostile intent and to ensure the continued safety of U.S. forces. As with necessity, the proportionality principle reflects an ancient international legal norm.

8.2.6 Types of ROE

Mere restatement of the core legal principles of proportionality and necessity does not indicate specifically enough the circumstances under which soldiers may fire weapons in national, unit, or individual self-defense. Nor do these principles articulate the myriad restrictions that a commander may impose on a force to serve the non-legal purposes mentioned above. Commands insert numerous types of specific rules into ROE annexes and soldier cards to elaborate further the rules of necessity and proportionality and to dictate precise terms of restrictions that are not derived from law. The following descriptions of types of rules permit OPLAW JAs and others to speak with precision about ROE.

Type I - Hostility Criteria Provide those making decisions whether to fire with a set of objective factors to assist in determining whether a potential assailant exhibits hostile intent and thus clarify whether shots can be fired before receiving fire.

☐Type II - *Scale of Force/Challenging Procedure*. Specify a graduated show of force that ground troops should use in ambiguous situations before resorting to deadly force. Include such measures as giving a verbal warning, using a riot stick, or perhaps firing an aimed warning shot. May place limits on the pursuit of an attacker.

Type III - Protection of Property and Foreign Nationals. Detail what and whom may be defended with force aside from the lives of U.S. soldiers and citizens. Include measures to be taken to prevent crimes in progress or the fleeing of criminals.

Type IV - *Weapons Control Status/Alert Conditions*. Announce, for air defense assets, a posture for resolving doubts over whether to engage. Announce for units observing alert conditions a series of measures designed to adjust unit readiness for attack to the level of perceived threat. The measures may include some or all of the other functional types of rules.

Type V - *Arming Orders*. Dictate which soldiers in the force are armed and with what weapons and ammunition. Specify which precise orders given by whom will permit the loading and charging of firearms.

Type VI - *Approval to Use Weapons Systems*. Designate what level commander must approve use of particular weapons systems. Perhaps prohibit use of a weapon entirely.

Type VII - Eyes on Target. Require that the object of fire be observed by one or more human or electronic means.

Type VIII - *Territorial or Geographic Restraints*. Create geographic zones or areas into which forces may not fire. May designate a territorial—perhaps political—boundary, beyond which forces may neither fire nor enter except perhaps in hot pursuit of an attacking force. Include tactical control measures that coordinate fire and maneuver by means of graphic illustrations on operations map overlays.

Type IX - Restrictions on *Manpower*. Prescribe numbers and types of soldiers to be committed to a theater or area of operations. Perhaps prohibit use of U.S. manpower in politically or diplomatically sensitive personnel assignments requiring allied manning.

Type X - Restrictions on Point Targets and Means of Warfare. Prohibit targeting of certain individuals or facilities. May restate basic rules of the law of war for situations in which a hostile force is identified and prolonged armed conflict ensues.

8.3   CJCS STANDING ROE

Chairman of the Joint Chiefs of Staff *Instruction 3121.01, Standing Rules of Engagement for U.S. Forces (SROE) is* the keystone document in the area of ROE. It provides implementation guidance to CINCs on the inherent right of self defense and the application of force for mission accomplishment. It is the result of an all-service review and revision of the former JCS Peacetime Rules of Engagement (PROE). The SROE apply to all U.S. forces—with limited exceptions for Multinational Force (MNF), Civil Disturbance, and disaster relief operations—and is designed to provide a common template for development and implementation of ROE across the range of military operations. The SROE are divided into three principle sections or enclosures:

Enclosure A (Standing Rules of Engagement):

This enclosure details the general purpose, intent and scope of the SROE, emphasizing the commander's right—and obligation—to use force in self-defense. Critical principles—such as unit, national, and collective selfdefense, hostile acts and intent, and the determination to declare forces hostile-are addressed as foundational elements of all ROE. Appendices provide specific guidance with respect to the scope of authority to use force, delegation of authority to declare forces hostile and exercise the right of national selfdefense, and application of the principle of proportionality, and they address special considerations associated with peacekeeping, command, control and information warfare (C2I), counterdrug, and noncombatant evacuation operations. In addition, force-specific (i.e., seaborne, land, and air) appendices detail indicators of hostile intent, geographic limitations of authority, and other concerns that are particular to operations within the defined force structure.

Enclosure B (Supplemental Measures):

Supplemental Measures are menu lists of ROE measures that may be adopted, requested, granted, or not used at all. Supplemental measures found in this enclosure enable the commander to obtain or grant those additional authorities necessary to accomplish an assigned mission. Tables of supplemental measures are divided into those actions requiring NCA approval, those that require either NCA or Combatant Commander approval and those that may be delegated to subordinate commanders. It is important to remember that the SROE are fundamentally permissive in nature, allowing a commander to use any weapon or tactic available and employ reasonable force to accomplish his mission. Supplemental measures provided in Enclosure B are intended to serve as a planning tool. Inclusion in the SROE supplemental list does not suggest that the commander needs to seek authority to use any of the listed items - that only occurs when incorporated into ROE issued for a specific operation. Supplemental ROE relate to mission accomplishment, not to self-defense, and never limit the commander's inherent right and obligation of self-defense.

Enclosure C (Compendium and Combatant Commanders' Special ROE):

Enclosure C contains a list of effective CJCS directives providing ROE guidance and Area of Responsibility specific rules of engagement submitted by the Combatant Commanders. Those special ROE address specific strategic and political sensitivities of the Combatant Commander's AOR and must be approved by CJCS. They are included in the SROE as a means to assist commanders and units participating in operations outside their assigned AORS.

The SROE also contain technical definitions of *self defense*:

Self Defense: The SROE do not limit a commander's inherent authority and obligation to use all necessary means available and to take all appropriate action in selfdefense of the commander's unit and other U.S. forces in the vicinity.

Unit Self Defense: The act of defending elements or personnel of a defined unit—as well as U.S. forces in the vicinity thereof – against a hostile act or intent. As applied to the soldier on the ground, unit self-defense includes the concept of individual self-defense.

National Self Defense: The act of defending the U.S.; U.S. forces; and in certain circumstances, U.S. citizens and their property, U.S. commercial assets, other designated non-U.S. forces, foreign nationals and their property, from a hostile act orhostile intent. As a subset of national self-defense, the act of defending other designated non-U.S. citizens, forces, property, and interests is referred to as collective self-defense. Authority to exercise national self-defense rests with the NCA, but may be delegated under specified circumstances; however, only the NCA may authorize the exercise of collective self-defense.

The SROE distinguish between the right and obligation of self-defense—which is not limited—and use of force for the accomplishment of an assigned mission. Authority to use force in mission accomplishment may be limited in light of political, military or legal concerns, but such limitations have no impact on the commander's right and obligation of self-defense.

Once a threat has been declared a hostile force, United States units and individual soldiers may engage without observing a hostile act or demonstration of hostile intent. The basis for engagement becomes *status* rather than *conduct*. The authority to declare a force hostile is given only to particular individuals in special circumstances. Appendix A to Enclosure A of the SROE contains guidance on this authority.

8.4   THE I-D-D-T METHODOLOGY

I-D-D-T Methodology

Interpret
Draft
Disseminate
Train

Commanders and staffs at all *echelons use the Interpret-Draft*-Disseminate-Train (I-D-D-T) methodology to incorporate ROE into the conduct of military operations. OPLAW JAs participate in all four facets of this methodology. Each facet is connected with and influences the others, and together the facets describe a process of continuous refinement and revision. The facets in the I-D-D-T methodology are interactive rather than sequential.

In joint task forces and at higher joint echelons, the I-D-D-T methodology is conducted by an ROE Planning Cell. The ROE Cell consists of the J-3, the J-2, the J-5, and the SJA or designated representatives, in addition to other special staff officers as appropriate. The Joint Task Force J-3 is responsible for ROE in crisis action planning, and the ROE Cell provides a formal planning structure through which the J-3 can effectively perform this responsibility. At corps and divisions, the I-D-D-T methodology is conducted by the members of the Deep Operations Coordination Cell (DOCC) and any Information Operations Cell, in conjunction with their duties in the targeting process. At brigade level, the Brigade Judge Advocate coordinates throughout the military decision-making process with the S-3 and with all staff officers engaged in targeting to ensure that the I-D-D-T methodology is conducted.

8.4.1 Interpret

At the operational and tactical levels of conflict, commanders and staffs must interpret the ROE issued by higher headquarters. At the theater level, the CINC and his staff must interpret the SROE and any mission-specific ROE that may emanate from CJCS or the National Command Authorities. Interpretation of ROE demands skills that are well-honed in the legal profession and specifically cultivated within the "judge" function of legal support to operations. Thus, while the commander will ultimately determine what a rule issued by higher headquarters demands of his command, OPLAW JAs will provide expert assistance.

The interpretive expertise of the OPLAW JA begins from a thorough familiarity with the SROE. It relies upon aggressive research to find all operations plans, orders, messages, standing operating procedures, treaties and coalition documents, directives, and regulations that purport to establish or change the ROE. It demands careful organization of these documents (chronologically, by issuing headquarters) to determine which is authoritative on which point. It requires skill at reconciling two rules that appear to contradict by considering broader imperatives contained in the text of the rules or other guidance as well as clearheaded reasoning from any available precedents as to how the contradictory rules have been interpreted in the past. It presumes intimate knowledge of the "facts" of the military operation and sufficient knowledge of staff organization and procedures to gather information from those who can provide additional needed facts. The OPLAW JA's contribution to the interpretation of ROE sometimes requires more than the skills of textual construction and factual analysis, however. In some situations, the OPLAW JA will be the sole member of the ROE Planning Cell, the DOCC, or the staff possessing the necessary training in objectivity and impartiality to state unpleasant interpretations of a higher headquarter's ROE. This requires constant situational awareness made possible through secure and nonsecure communication nodes, mobility,

the commander's task organization of placing OPLAW JAs in command posts as discussed in earlier chapters.

8.4.2 Draft

In some operations, ROE will be topdriven, meaning that a higher echelon commander— for instance a CINC—establishes ROE that must be disseminated verbatim to all lower echelons. The preference of military doctrine, because it preserves lower echelon initiative, is for ROE to be *topfed*, meaning that a higher-echelon commander establishes rules for immediate subordinate echelons. These subordinate echelons in turn disseminate ROE that are consistent with those of higher headquarters but tailored to the particular unit's mission. These methods may also coexist within a particular operation, as some rules may be topdriven while others may be subject to discretion on the manner of dissemination and thus top-fed. When the rules are *not* top-driven, commanders and staffs from theater level down to brigade draft ROE for their commands. At theater and JTF levels, the drafting of ROE results in Appendix 8 (Rules of Engagement) to Annex C (Operations) of the operations plan (OPLAN) or operations order (OPORD), in accordance with the Joint Operations Planning and Execution System (JOPES), Joint Publication 5-03. At corps, division, and brigade level, the drafting of ROE results in Annex E to the OPLAN or OPORD in accordance with Army doctrine. Army doctrine also calls for the integration of ROE in the coordinating instructions subparagraph of paragraph 3 (Execution) of the body of the OPLAN or OPORD.

JOPES and Army doctrine provide minimal guidance as to the contents and format of these ROE documents. Standing operating procedures (SOPs), which exist in part to enable OPLANs and OPORDs to be brief, frequently provide extensive content and format guidance. This guidance, in turn, typically draws heavily upon the SROE, incorporating both standing rules and supplemental rules according to a command-specific format that is periodically updated and continuously trained. Appendix E to Enclosure B of the SROE contains a message format by which CINCs request and receive supplemental ROE.

The drafting of ROE in the context of *multinational operations* presents additional challenges. The SROE state that United States forces assigned to the operational control (OPCON) of a multinational force will follow the ROE of the multinational force unless otherwise directed by the National Command Authorities (NCA). The SROE further state that United States forces will be assigned and remain OPCON to a multinational force only if the combatant commander and higher authority determine that the ROE for that multinational force are consistent with the policy guidance on unit self-defense and with the rules for individual selfdefense contained in this document.

When U.S. forces, under United States OPCON, operate in conjunction with a multinational force, reasonable efforts will be made to effect common ROE. If such ROE cannot be established, U.S. forces will exercise the right and obligation of self-defense contained in the SROE while seeking guidance from the appropriate combatant command. Participation in multinational operations may be complicated by varying national obligations derived from international agreements; i.e., other members in a coalition may not be signatories to treaties that bind the United States, or they may be bound by treaties to which the United States is not a party. United States forces still

remain bound by U.S. treaty obligations even if the other members in a coalition are not signatories to a treaty and need not adhere to its terms.

A multinational partner's domestic law, policy, and social values may also effect multinational planning at the strategic and operational level. Lessons learned from recent multinational exercises and operations reflect significant differences in how various countries understand and view the application of military force through the ROE. These factors can severely limit *or* expand a Multinational Commander's ability to use a national contingent's capabilities. Legal advisors at all levels of planning can assist in the interpretation and drafting of ROE. The United States places an importance on the ROE that other nations may not share, attaches meaning to terms with which other nations' forces may not be familiar, and implements ROE within a context of doctrine that may differ markedly from that of other nations. When operating with forces from non-English-speaking countries, these differences will be accentuated. Energetic participation by operational lawyers in the drafting process helps ensure that final ROE products reflect the legitimate interests of all sides. In such circumstances, United States forces benefit by having a completed draft (i.e., the SROE) available as a basis for discussion. When developing ROE in conjunction with the United Nations, diplomatic or policy constraints occasionally dictate language peculiar to United Nations operations. In these cases, the availability of a complete, preferred alternative (again, the SROE) give United States forces a medium with which to communicate their concerns. The sound *drafting* of ROE will adhere to several *principles*:

Consider the METT-TC. The mission will drive the ROE, and as an operation unfolds in phases, the mission may trigger significant shifts in the ROE. The existence of enemy forces or other threats will change the ROE from conduct-based rules to status-based rules with respect to those threats that have been declared hostile forces. The terrain will limit the feasibility of certain force options. The capabilities and level of training of friendly troops will determine whether certain ROE need to be spelled out in the order. The amount of time available may dictate both what force options can be used and what preparations can be made to implement a particular rule. The presence or absence of civilians will inevitably raise questions about whom friendly forces can protect under the ROE.

Push Upward on the Drafting Process. The SROE provides the means to request supplementals. Use such requests. If the METTTC suggests a ROE that is not contained in the higher headquarters annex, push a suggested rule to the higher headquarters for approval. Keep in mind, however, that the SROE are permissive, as discussed above.

Avoid Restating Strategy and Doctrine. ROE should not be used as the means to state strategy or doctrine. A common mistake of the inexperienced is to attempt to use the ROE annex to accomplish something for which an entire system exists in Army doctrine.

Avoid Restating the Law of War. ROE should not restate the law of war. Commanders may desire to emphasize an aspect of the law of war that is particularly relevant to a specific operation (e.g., see Desert Storm ROE regarding cultural property), but they should not include an extensive discussion of the Hague Regulations and Geneva Conventions.

Avoid Restating Tactics. Because the purposes of ROE (political, legal, military) are sometimes difficult to discern, a boundary line drawn upon an operations overlay may be the result of a commander's concept of operations while simultaneously transmitting a rule of engagement stemming from political considerations. Still, many phase lines, control points, and other fire and tactical control measures have no meaningful connection to political or legal considerations. These measures belong in other portions of the OPLAN or OPORD, not in the ROE.

Avoid Safety-Related *Restrictions*. ROE should not deal with safety-related restrictions. Certain weapons require specific safety-related, pre-operation steps. These should not be detailed in the ROE, but may appear in the tactical or field SOP.

Avoid Excessively Qualified Language. ROE are useful and effective only when understood, remembered, and readily applied under stress. Well formulated ROE anticipate the circumstances of an operation and provide unambiguous guidance to the soldier, sailor, airman and marine before he confronts a threat.

8.4.3 Disseminate

The OPLAN or OPORD annex is only the minimum means of disseminating the ROE. The annex at each echelon will build upon the command's SOP, which is the primary, continuous means of disseminating those ROE that tend to appear in successive operations. Various methods effectively capture dissemination across a command. The Commander, S3/G3/J3, and SJA must determine its system on quickly and efficiently disseminating changes in the ROE and train its staff and subordinate commanders accordingly. When particular ROE issued by higher headquarters are not anticipated in the TACSOP, the OPORD annex must state these rules outright, without reference to an ROE menu item. Also, the commander and staff must provide mission-specific ROE training for deploying soldiers. Judge advocates must be prepared to assist in this training. While never a substitute for training, an ROE card is often helpful as a ready reference to soldiers at the lowest level—this is done in virtually every instance.

8.4.4 Train

ROE must be disseminated throughout the force and reinforced by training and rehearsal. Soldiers execute in the manner they train; they will carry out their tasks in compliance with the ROE when trained to do so. In today's operations, where a single soldier's action can change not only the tactical but the strategic and political setting, it is vital that commanders and judge advocates disseminate and train ROE to all lowest levels. All training opportunities should reinforce ROE and teach soldiers how to apply the basic rules of self-defense. Individual and unit preparation for specific missions must incorporate training that challenges soldiers to apply mission-specific ROE. In crisis response situations, ROE training may consist of leaders and soldiers receiving and training on the mission-specific ROE en route to the departure airfield. In that case, the knowledge gained on the basic rules of self-defense and scenario-specific, situational ROE during past scheduled training enables commanders and soldiers to better

understand and adhere to the crisis situation ROE. When preparing for missions such as peacekeeping or disaster relief, commanders should remember that these missions normally require soldiers to use greater restraint and discipline than in offensive or defensive operations. ROE should always include situational training. This situational training should challenge soldiers in employing weapons, levels of force, and other ROE. *Situational training exercises (STXs)* focus on one or a small group of tasks— within a particular mission scenario—and require that soldiers practice until the tasks can be executed to some pre-established standard. Trainers refer to these scenarios unofficially as "vignettes," and to this type of training as "lane training." To conduct STXs on ROE, a commander, judge advocate, or other trainer places a soldier in a particular simulated operational scenario and then confronts him with an event, such as the crashing of a traffic checkpoint barrier by a speeding vehicle. The trainer evaluates the soldier's response, and afterward discusses alternative responses available within the ROE. The STX brings to life abstract rules contained in written ROE, giving the soldier concrete terms of reference within which to determine his response. In this way, the soldier achieves the balance between initiative and restraint so important to success, particularly in MOOTW. The SJA must be prepared to assist in providing ROE training, including vignette-driven training, and to ensure that subordinate SJAs are involved in providing similar assistance for ROE training.

The SROE articulate baseline principles that are useful in conducting soldier training within STXs, prior to a deployment. These principles can be restated within an acronym that permits individual common task training (CTT) by establishing a standard against which to evaluate the soldier's response during the STX. One training device that captures the baseline SROE principles is the mnemonic RAMP. The box below outlines the elements of R-A-M-P, which when used within a context of repetitive and varied situational training, inculcates effective responses under conditions of stress. Because R-A-M-P principles incorporate necessity and proportionality, RAMP training provides a solid framework upon which missionspecific ROE training can build.

Nevertheless, legal personnel must assist soldiers in understanding that R-A-M-P self-defense principles are not a substitute for mission-specific ROE training.

In all ongoing operations, but particularly in volatile and rapidly changing peace operations, commanders must conduct continuous refresher training. Commanders in Bosnia effectively developed and updated situational ROE training based on actual recorded events that took place in the theater of operations from previous weeks. In the gray zone surrounding ROE in peace enforcement operations, commanders, with their OPLAW JAs, must continually hone their soldiers' ability to balance initiative and restraint.

R-A-M-P

R - Return Fire with Aimed Fire. Return force with force. You always have the right to repel hostile acts with necessary force.

A - Anticipate Attack. Use force if, but only if, you see clear indicators of hostile intent.

M - Measure the amount of Force that you use, if time and circumstances permit. Use only the amount of force necessary to protect lives and accomplish the mission.

P - Protect with deadly force only human. life, and property designated by your commander. Stop short of deadly force when protecting other property.

APPENDIX B

<u>EXAMPLES: ACTUAL MILITARY RULES OF ENGAGEMENT (ROE) UTILIZED BY THE MILITARY SERVICES IN JOINT MILITARY OPERATIONS, AND TRAINING RULES OF ENGAGEMENT USED TO TRAIN MILITARY MEMBERS FOR THEIR USE IN MILITARY OPERATIONS</u>

PURPOSE OF APPENDIX B: This appendix is offered to readers to illustrate the types of rules of engagement distributed to servicemembers as they deploy for military operations.

ROE TRAINING CARD
MARINE EXPEDITIONARY UNIT (Special Operations Capable)

Nothing in these rules limits your Authority and Obligation to take all necessary and appropriate actions to defend yourself and your unit.

Right to defend: Always return fire with aimed fire. You have the right to use force to repel hostile acts.

Anticipate attack: You have the right to use force to respond to clear indications of hostile intent.

Measure your force: When time and circumstances permit, use only that force which is necessary and proportional to protect lives and accomplish the mission.

Protect with Deadly force: only human life and sensitive mission essential property designated by the commander.

USE OF FORCE:

Force includes everything from shouting a warning up to the use of deadly force. Use as much force as is necessary to decisively end the situation in your favor. You are authorized to use force against another person or group to protect yourself and others and you may use force to accomplish your mission.

SELF-DEFENSE:

You will always protect yourself and others against anyone who uses or is clearly about to use force against you. You may initiate or use preemptive force against those who indicate "hostile intent" against you or other friendly forces.

"Hostile intent" is the threat of imminent use of force by an opposing force or terrorist unit against friendly forces.

MISSION ACCOMPLISHMENT:

Your commanders will tell you the rules of engagement established by higher headquarters to accomplish your mission. The rules of engagement provided by a higher headquarters to accomplish your mission do not limit a unit leader's inherent authority and obligation at any time to use all necessary means available and to take all appropriate action in self-defense of your unit and other US forces in the vicinity. You may always initiate the use of force against those forces that have been "declared hostile." Your commander will brief you on the status of the opposing forces. You will use force against anyone who seeks to impede or prevent you from accomplishing your mission.

Always apply the **Principles of the Law of War** in using force. They are:

1. MARINES FIGHT ONLY ENEMY COMBATANTS.
2. MARINES DO NOT HARM ENEMIES WHO SURRENDER. YOU MUST DISARM THEM AND TURN THEM OVER TO YOUR SUPERIOR.
3. MARINES DO NOT KILL OR TORTURE PRISONERS.
4. MARINES COLLECT AND CARE FOR ALL WOUNDED, WHETHER FRIEND OR FOE.
5. MARINES DO NOT ATTACK MEDICAL PERSONNEL, FACILITIES, OR EQUIPMENT.
6. MARINES DESTROY NO MORE THAN THE MISSION REQUIRES.
7. MARINES TREAT ALL CIVILIANS HUMANELY.
8. MARINES DO NOT STEAL, MARINES RESPECT PRIVATE PROPERTY AND POSSESSIONS.
9. MARINES SHOULD DO THEIR BEST TO PREVENT VIOLATIONS OF THE LAW OF WAR; THEY MUST REPORT ALL VIOLATIONS OF THE LAW OF WAR TO THEIR SUPERIORS.

APPENDIX B
CJTF-180
JOINT TASK FORCE ISO: HAITI

Nothing in the ROE limits your right to use necessary force to defend yourself, your fellow service members, your unit, other JTF personnel, key facilities, and property designated by your commander.

1. Repel hostile acts with necessary force, including deadly force. Use only the amount of force needed to protect lives/property and accomplish the mission. Engage targets with observed, direct, deliberately aim fire.

2. Do not hesitate to respond with force against hostile acts and signs with hostile intent.

3. You may use necessary force to stop, disarm and detain members of the Haitian military, police, other armed persons, or other persons committing hostile acts or showing hostile intent. Stop and detain other persons who interfere with your mission. Evacuate detainees to a designated location for release to proper authorities. Treat all detainees humanely.

4. When a tactical situation permits, you should give a challenge before using deadly force. Challenge by:

A. Shouting in English "U.S. STOP OR I WILL FIRE!"

b. Shouting in Creole "U.S. KANPE OUBIEN MAP TIRE!" Phonetic: "U.S. kaHJnpey oobeeEH(n) mahp tEErey!.

c. Fire warning shots into the air.

5. Treat all persons with dignity and respect.

6. Do not take private property without commander's permission.

7. Remember: No force has been declared hostile, including the Haitian Army and police. Use of deadly force must be based on hostile acts or clear indicators of hostile intent.

NOTHING IN THESE ROE LIMITS YOUR OBLIGATION TO TAKE ALL NECESSARY AND APPROPRIATE ACTION TO DEFEND YOURSELF AND YOUR UNIT:

1. No forces have been declared hostile. Offensive military operations (raids, assaults, etc.) require CTJF 180 approval.

2. Treat all persons with dignity and respect.

3. Use all necessary force, up to and including deadly force, to defend U.S. forces, U.S. citizens, or designated foreign nationals against an attack or threat of imminent attack. When deadly force is employed, engage targets with observed, deliberately aimed fire.

4. Members of the military, police or other armed persons may be stopped, detained, and if necessary, disarmed if they appear to threaten essential civic order.

5. Civilians may be stopped if they appear to be a threat to U.S. forces, protected persons, key facilities, or property designated mission essential by CJTF 180. If determined to be a threat, they may be further detained. If not, they will be released.

6. Necessary and proportional force is authorized to control disturbances and disperse crowds threatening essential civic order.

7. Persons observed committing serious criminal acts will be detained using minimal force necessary up to and including deadly force. Serious criminal acts include: homicide, aggravated assault, rape, arson and robbery. Non-lethal force is authorized to detain persons observed committing burglary or larceny. Release persons suspected of serious criminal acts to Haitian law enforcement officers/other appropriate authorities as soon as possible.

8. Civilian vehicles may be stopped and their occupants' identities checked for security purposes. If a civilian vehicle does not stop on order and is approaching a check point or security perimeter, you may fire to disable the vehicle.

9. Do not enter the Dominican Republic without permission from CINCUSACOM.

10. Deadly force is not authorized to disarm Haitians, enforce curfews, or stop looting, unless those individuals involved engage in hostile acts or demonstrate hostile intent.

11. Possession of a weapon in public by any individual does not, by itself, constitute a hostile act or demonstrate hostile intent.

12. U.S. forces are not authorized to grant political asylum. Temporary refuge will be granted only if necessary to protect human life.

13. Respect diplomatic personnel, residences, facilities, and property. Do not enter diplomatic residences/facilities unless invited by appropriate diplomatic officials or approved by CINCUSACOM.

MEU SUPPLEMENTAL KOSOVO ROE CARD

This card is to be used in conjunction with the Blue KFOR cards.

1. Use of Force

*Minimum Force (up to and including deadly force) and Escalation of force rules apply:

*in defense of unit, persons or property with designated special status
      Examples.- Persons - UN or Red Cross personnel Property weapons, ammo, classifieds

*against anyone interfering with the discharge of your duties

*against anyone threatening or committing a serious criminal act

*defend against intrusion in to military restricted areas

*prevent the escape of a detained person

2. **Other Measures**

a. Detention

*You may only detain <u>belligerents </u>(armed individuals) who attempt to enter controlled areas

*You may detain civilians who: commit crimes, interfere with your mission, or attempt to enter controlled areas. Serious crimes include: anything causing death or serious bodily harm (murder, rape, assault)

b. Search and Seizure
You may search: Persons
                       Property
                       Vehicles

*in the execution of your duties enforcing the peace agreement
*when you detain individuals
*on suspicion of the presence of weapons or other military equipment

ROE is sensitive material. Do NOT lose this card. Return card through chain of command to SJA on completion of the mission.

APPENDIX B
OPERATION PROVIDE COMFORT

RULES OF ENGAGEMENT

As Authorized by JCS (EUCOM Dir. 55-47)

1. All military operations will be conducted in accordance with the Law of War

2. The use of armed force will be utilized as a measure of last resort only.

3. nothing in these rules negates or otherwise over-rides a commander's obligation to take all necessary and appropriate actions for his unit's self defense.

4. U.S. forces will not fire unless fired upon, unless there is clear evidence of hostile intent.

HOSTILE INTENT - The threat of imminent use of force by an Iraqi force, or other foreign force, terrorist group, or individuals against the U. S., U. S. forces , US. Citizens, or **Kurdish** or other refugees located above the 36th parallel or otherwise located within a. U.S. or allied safe haven refugee area. When the on scene commander determines based on convincing evidence, that HOSTILE INTENT is present, the right exists to use proportional force to deter or to neutralize the threat.

HOSTILE ACT - Includes armed force used directly to preclude or impede the mission and/or duties of US or allied forces.

5. Response to hostile fire directly threatening US .or allied care shall be rapid and directed at the source of hostile fire, using only that force necessary and proportional to eliminate the threat. Other foreign forces (such as reconnaissance aircraft) that have shown an active integration with the attacking form may be engaged. Use minimum amount of force necessary to control the situation.

6. You may fire into Iraqi territory in response to hostile fire.

7. You may fire into another nation's territory in response to hostile fire only if the cognizant government is unable or unwilling to stop that force's hostile acts effectively and promptly.

8. Surface-to-air missiles will engage hostile aircraft flying north of the 36th parallel.

9. Surface to air missiles will engage hostile aircraft south of the 36th parallel only when they demonstrate hostile intent or commit a hostile act. Except in cases of self-defense" authority for such engagement rests with the designated air defense commander. Warning bursts may be fired ahead of foreign aircraft to deter hostile acts.

10. In the event US forces are attacked or threatened by UNARMED hostile elements, mobs, or rioters, the responsibility for the protection of US forces rests with the US commanding officer. On scene commanders will employ the following to overcome the threat.

a. Warnings to demonstrators
b. Show of force, including use of riot control formation
c. Warning shots fired over the heads of hostile elements
d. Other reasonable uses of force necessary under circumstances and proportional to the threat.

11. Use the following guidelines when applying these rules:

a. Use of force only to protect lives
b. Use of minimum force necessary.
c. Pursuit will not be taken to retaliate; however, immediate pursuit may begin and continue for as long as there is an imminent threat to US forces. In the absence of JCS approval U.S. forces should not pursue any hostile force into another nation's territory.

d. If necessary and proportional, use all available weapons to deter, neutralize, or destroy the threat as required.

APPENDIX B
DESERT STORM
RULES OF ENGAGEMENT

ALL ENEMY MILITARY PERSONNEL AND VEHICLES TRANSPORTING THE ENEMY OR

THEIR SUPPLIES MAY BE ENGAGED SUBJECT TO THE FOLLOWING RESTRICTIONS:

A. Do not engage anyone who has surrendered, is out of battle due to sickness or wounds, is shipwrecked, or is an aircrew member descending by parachute from a disabled aircraft.

B. Avoid harming civilians unless necessary to save US lives. Do not fire into civilian populated areas or buildings which are not defended or being used for military purposes.

C. Hospitals, churches, shrines, schools, museums, national monuments, and any other historical or cultural sites will not be engaged except in self-defense.

D. Hospitals will be given special protection, Do not engage hospitals unless the enemy uses the hospital to commit acts harmful to US forces, and then only after giving a warning and allowing a reasonable time to expire before engaging, if the tactical situation permits.

E. Booby traps may be used to protect friendly positions or to impede the progress of enemy forces. They may not be used on civilian personal property. They will be recovered or destroyed when the military necessity for their use no longer exists.

F. Looting and the taking of war trophies are prohibited.

G. Avoid harming civilian property unless necessary to save US lives. Do not attack traditional civilian objects, such as houses, unless they are being used by the enemy for military purposes and neutralization assists in mission accomplishment.

H. Treat all civilians and their property with respect and dignity. Before using privately owned property, check to see if publicly owned property can substitute. No requisitioning of civilian property, including vehicles, without permission of a company level commander and without giving a receipt. It an ordering officer can contract the property, then do not requisition it.

I. Treat all prisoners humanely and with respect and dignity.

J. ROE Annex to the OPLAN provides more detail. Conflicts between this card and the OPLAN should be resolved in favor of the OPLAN.

REMEMBER

1. FIGHT ONLY COMBATANTS.
2. ATTACK ONLY MILITARY TARGETS.
3. SPARE CIVILIAN PERSONS AND OBJECTS.
4. RESTRICT DESTRUCTION TO WHAT YOUR MISSION REQUIRES.

APPENDIX C

THE CONVENTION ON THE RIGHTS OF THE CHILD

PURPOSE OF THE APPENDIX: Offered so that readers would have immediate access to the only international convention dealing directly with the rights of children. The United States has not become a signatory to this convention.

Full text of the Convention

The Convention on the Rights of the Child was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. It entered into force 2 September 1990, in accordance with article 49.

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the

community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children, '

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) ; and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict,

Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

Part I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights,

States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and. as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.

2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will. except when competent authorities subject to

judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. 4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in

the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of

the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin; (c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child. 3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled

children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account

shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of

such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

(a) Make primary education compulsory and available free to all;

(b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;

(c) Make higher education accessible to all on the basis of capacity by every appropriate means;

(d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United

Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education. or to be harmful to the

child's health or physical, mental, spiritual, moral or social development.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end and having regard to the relevant provisions of other international instruments, States Parties shall in particular: (a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years. States Parties shall endeavour

to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing

according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings. 3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

Part II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

Article 43

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.

2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.

3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.

4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months. The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two

years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.

7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.

8. The Committee shall establish its own rules of procedure.

9. The Committee shall elect its officers for a period of two years.

10. The meetings of the Committee shall normally be held at United Nations Headquarters or at any other convenient place as determined by the Committee. The Committee shall normally meet annually. The duration of the meetings of the Committee shall be determined and reviewed, if necessary, by a meeting of the States Parties to the present Convention, subject to the approval of the General Assembly.

11. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Convention.

12. With the approval of the General Assembly, the members of the Committee established under the present Convention shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide.

Article 44

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years.

2. Reports made under the present article shall indicate factors and difficulties, if any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country

concerned.

3. A State Party which has submitted a comprehensive initial report to the Committee need not, in its subsequent reports submitted in accordance with paragraph 1 (b) of the present article, repeat basic information previously provided.

4. The Committee may request from States Parties further information relevant to the implementation of the Convention.

5. The Committee shall submit to the General Assembly, through the Economic and Social Council, every two years, reports on its activities.

6. States Parties shall make their reports widely available to the public in their own countries.

Article 45

In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

(a) The specialized agencies, the United Nations Children's Fund and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;

(b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;

(c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child;

(d) The Committee may make suggestions and general recommendations

based on information received pursuant to articles 44 and 45 of the present Convention. Such suggestions and general recommendations shall be transmitted to any State Party concerned and reported to the General Assembly, together with comments, if any, from States Parties.

Part III

Article 46

The present Convention shall be open for signature by all States.

Article 47

The present Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 48

The present Convention shall remain open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 49

1. The present Convention shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.

2. For each State ratifying or acceding to the Convention after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification or accession.

Article 50

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties

present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Convention and any earlier amendments which they have accepted.

Article 51

1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.

2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.

3. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General

Article 52

A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

Article 53

The Secretary-General of the United Nations is designated as the depositary of the present Convention.

Article 54

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

In witness thereof the undersigned plenipotentiaries, being duly authorized
thereto by their respective governments, have signed the present
convention.

APPENDIX D

OPTIONAL PROTOCOL: TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE INVOLVEMENT OF CHILDREN IN ARMED CONFLICT

PURPOSE OF THE APPENDIX: Offered to readers to give them immediate access to the international protocol dealing with children and conflict.

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

The States Parties to the present Protocol,

Encouraged by the overwhelming support for the Convention on the Rights of the Child,1 demonstrating the widespread commitment that exists to strive for the promotion and protection of the rights of the child,

Reaffirming that the rights of children require special protection, and calling for continuous improvement of the situation of children without distinction, as well as for their development and education in conditions of peace and security,

Disturbed by the harmful and widespread impact of armed conflict on children and the long-term consequences it has for durable peace, security and development,

Condemning the targeting of children in situations of armed conflict and direct attacks on objects protected under international law, including places that generally have a significant presence of children, such as schools and hospitals,

Noting the adoption of the Rome Statute of the International Criminal Court, in particular, the inclusion therein as a war crime, of conscripting or enlisting children under the age of 15 years or using them to participate actively in hostilities in both international and non-international armed conflicts,

Considering therefore that to strengthen further the implementation of rights recognized in the Convention on the Rights of the Child there is a need to increase the protection of children from involvement in armed conflict,

Noting that article 1 of the Convention on the Rights of the Child specifies that, for the purposes of that Convention, a child means every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier,

Convinced that an optional protocol to the Convention that raises the age of possible recruitment of persons into armed forces and their participation in hostilities will contribute effectively to the implementation of the principle that the best interests of the child are to be a primary consideration in all actions concerning children,

Noting that the twenty-sixth International Conference of the Red Cross and Red Crescent in December 1995 recommended, inter alia, that parties to conflict take every feasible step to ensure that children below the age of 18 years do not take part in hostilities,

Welcoming the unanimous adoption, in June 1999, of International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, which prohibits, inter alia, forced or compulsory recruitment of children for use in armed conflict,

Condemning with the gravest concern the recruitment, training and use within and across national borders of children in hostilities by armed groups distinct from the armed forces of a State, and recognizing the responsibility of those who recruit, train and use children in this regard,

Recalling the obligation of each party to an armed conflict to abide by the provisions of international humanitarian law,

Stressing that the present Protocol is without prejudice to the purposes and principles contained in the Charter of the United Nations, including Article 51, and relevant norms of humanitarian law,

Bearing in mind that conditions of peace and security based on full respect of the purposes and principles contained in the Charter and observance of applicable human rights instruments are indispensable for the full protection of children, in particular during armed conflicts and foreign occupation,

Recognizing the special needs of those children who are particularly vulnerable to recruitment or use in hostilities contrary to the present Protocol owing to their economic or social status or gender,

Mindful of the necessity of taking into consideration the economic, social and political root causes of the involvement of children in armed conflicts,

Convinced of the need to strengthen international cooperation in the implementation of the present Protocol, as well as the physical and psychosocial rehabilitation and social reintegration of children who are victims of armed conflict,

Encouraging the participation of the community and, in particular, children and child victims in the dissemination of informational and educational programmes concerning the implementation of the Protocol,

Have agreed as follows:

Article 1

States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities.

Article 2

States Parties shall ensure that persons who have not attained the age of 18 years are not compulsorily recruited into their armed forces.

Article 3

1. States Parties shall raise in years the minimum age for the voluntary recruitment of persons into their national armed forces from that set out in article 38, paragraph 3, of the Convention on the Rights of the Child,1 taking account of the principles contained in that article and recognizing that under the Convention persons under the age of 18 years are entitled to special protection.

2. Each State Party shall deposit a binding declaration upon ratification of or accession to the present Protocol that sets forth the minimum age at which it will permit voluntary recruitment into its national armed forces and a description of the safeguards it has adopted to ensure that such recruitment is not forced or coerced.

3. States Parties that permit voluntary recruitment into their national armed forces under the age of 18 years shall maintain safeguards to ensure, as a minimum, that:

(a) Such recruitment is genuinely voluntary;

(b) Such recruitment is carried out with the informed consent of the person's parents or legal guardians;

(c) Such persons are fully informed of the duties involved in such military service;

(d) Such persons provide reliable proof of age prior to acceptance into national military service.

4. Each State Party may strengthen its declaration at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall inform all States Parties. Such notification shall take effect on the date on which it is received by the Secretary-General.

5. The requirement to raise the age in paragraph 1 of the present article does not apply to schools operated by or under the control of the armed forces of the States Parties, in keeping with articles 28 and 29 of the Convention on the Rights of the Child.

Article 4

1. Armed groups that are distinct from the armed forces of a State should not, under any circumstances, recruit or use in hostilities persons under the age of 18 years.

2. States Parties shall take all feasible measures to prevent such recruitment and use, including the adoption of legal measures necessary to prohibit and criminalize such practices.

3. The application of the present article shall not affect the legal status of any party to an armed conflict.

Article 5

Nothing in the present Protocol shall be construed as precluding provisions in the law of a State Party or in international instruments and international humanitarian law that are more conducive to the realization of the rights of the child.

Article 6

1. Each State Party shall take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement of the provisions of the present Protocol within its jurisdiction.

2. States Parties undertake to make the principles and provisions of the present Protocol widely known and promoted by appropriate means, to adults and children alike.

3. States Parties shall take all feasible measures to ensure that persons within their jurisdiction recruited or used in hostilities contrary to the present Protocol are demobilized or otherwise released from service. States Parties shall, when necessary, accord to such persons all appropriate assistance for their physical and psychological recovery and their social reintegration.

Article 7

1. States Parties shall cooperate in the implementation of the present Protocol, including in the prevention of any activity contrary thereto and in the rehabilitation and social reintegration of persons who are victims of acts contrary thereto, including through technical cooperation and financial assistance. Such assistance and cooperation will be undertaken in consultation with the States Parties concerned and the relevant international organizations.

2. States Parties in a position to do so shall provide such assistance through existing multilateral, bilateral or other programmes or, inter alia, through a voluntary fund established in accordance with the rules of the General Assembly.

Article 8

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol, including the measures taken to implement the provisions on participation and recruitment.

2. Following the submission of the comprehensive report, each State Party shall include in the reports it submits to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

Article 9

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

3. The Secretary-General, in his capacity as depositary of the Convention and the Protocol, shall inform all States Parties to the Convention and all States that have signed the Convention of each instrument of declaration pursuant to article 3.

Article 10

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 11

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General. If, however, on the expiry of that year the denouncing State Party is engaged in armed conflict, the denunciation shall not take effect before the end of the armed conflict.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any act that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

Article 12

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

Article 13

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

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