

JUST WAR TRADITION AND THE NEW WAR ON TERRORISM

A discussion of the origins and precepts of just war principles and their application to a war on terrorism



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A panel discussion sponsored by the Pew Forum on Religion and Public Life in October, 2001 featured three leading academics with different backgrounds and perspectives concerning the just war tradition. After a brief explanation of the history of just war theory, the panelists made informal remarks and then took questions from the audience as part of a general discussion. Moderator Melissa Rogers is executive director of the Pew Forum on Religion and Public Life.

JEAN BETHKE ELSHTAIN

MELISSA ROGERS: We all share the deep sadness of fellow Americans over the incalculable losses suffered through the attacks on the World Trade Center and the Pentagon. In the wake of these attacks, we face a host of critical issues, many of which intersect with religion. Today we discuss the just war tradition, its origins and principles, and the ways in which it might apply to a war on terrorism. Laying the foundation for this discussion are three distinguished scholars on the topic of ethics and the use of military force. Each of them is a prolific and critically acclaimed author on this subject, as well as many others.

We will hear first from JEAN BETHKE ELSHTAIN, the Laura Spelman Rockefeller Professor of Social and Political Ethics at the University of Chicago. She is one of the co-chairs of the Pew Forum on Religion and Public Life, along with E.J. Dionne, and we are both proud of

and grateful for her leadership. Jean has written extensively on the topic of just war and has edited a volume entitled *Just War Theory*. Her colleague Michael Walzer calls her “a truly independent, deeply serious, politically engaged and wonderfully provocative political theorist.” Those of you who know her work will, I’m sure, heartily agree.

Professor Elshtain will begin our discussion by describing the origins, background and basic principles of just war theory.

From President George W. Bush to the average man and woman on the street, Americans are evoking the language of justice to characterize our response to the despicable deeds perpetrated against innocent men, women and children on September 11th. When they do this, they tap into a complex tradition called just war. The origins of the just war tra-

dition are usually traced to St. Augustine's fourth century masterwork, *The City of God*. In that text, Augustine grapples with the undeniable fact that Christian teaching challenges the use of violence. He comes to the conclusion that wars of aggression and aggrandizement are never acceptable, but there are occasions when resort to force may be tragically necessary; not a normative good, but tragically necessary.

What then makes the use of force justifiable? For Augustine, the most potent justification is to protect the innocent — those in no position to defend themselves — from certain harm. If one has compelling evidence that harm will come to persons unless action involving coercive force is taken, a requirement of neighbor love may be a resort to arms. Self-defense is trickier. According to Augustine, it is better for the Christian to suffer harm rather than to commit it. But are we permitted to make that commitment to non-self-defense for others? I would say not.

The upshot of Augustine's reflections, refined over time, is that a primary rule for those committed to just war is non-combatant immunity, or the so-called principle of discrimination, meaning that non-combatants must not be the intended targets of violence. A further implication is that a carefully planned act of terror against non-combatants of one's own country is an injury that demands a response. That response involves just punishment, not in order to inflict grievous harm on the non-combatants of a country or a group whose operatives have harmed your citizens, but to interdict in order to prevent further harm and to punish those responsible for the harm that has already occurred. And this, of course, takes place in a world that international relations theorists called a world of self-help. That is, there's absolutely no guarantee that anybody else is going to do this for you. So it's an obligation of government to respond. In responding in a way that abides by certain limits, one reaffirms a world of moral responsibility and justice.

When a wound as grievous as that of September 11 has been inflicted on a body politic, it would be irresponsible, it would be a dereliction of duty, it would be a flight from the serious vocation of politics to fail to respond. The Christian tradition also

tells us that government is instituted by God. This does not mean that every government and every public official is godly, but rather that he or she is charged with a solemn responsibility for which there is a divine warrant.

A political ethic that flows from this responsibility is one that emphasizes not absolute ends — to go back to Max Weber's classic essay on politics as a vocation — but the responsibility to tend to a common good, the safety, peace and security of one's citizens. The just war tradition offers a way to exercise that responsibility. It attempts to steer a course between the "anything goes" ethic of realpolitik often associated with thinkers like Machiavelli and Hobbes and between an ethic that forswears action if that action commits the country to the use of armed force in a responsible and limited way.

In the immediate aftermath of the events of 9/11, I said to a friend, "Now we are reminded of what governments are for." It certainly put debates about which prescription drug plan is better than another in a certain perspective. None of the goods human beings cherish, including the free exercise of religion, can flourish absent a measure of civic peace and security. If evil is permitted to grow, good goes into hiding. Evildoers that lurk and plot in darkness and secret, that operate stealthily and that refuse to accept responsibility for wrongdoing, perpetrate harm beyond the immediate violent event. It is they who try to force good into hiding.

Now, what "good" do I have in mind? The simple but profound good that is moms and dads raising their children, men and women going to work, citizens of a great city making their way on streets and subways, ordinary people buying airplane tickets in order to visit the grandkids in California, men and women en route to transact business with colleagues in other cities, the faithful attending their churches, synagogues and mosques without fear.

Make no mistake about it. This quotidian idea, this basic civic peace — *tranquillitas ordinis* it's called in the tradition — is a great good. It is not, of course, the "peace of the kingdom" promised by Scripture. That awaits the end time. Beating swords into plowshares and spears into pruning hooks, a world in

which nations shall not lift up sword against nation, neither shall they learn war any more, is a vision connected with certain conditions, as Kenneth Anderson reminds us in a recent article in *The Times Literary Supplement*. For the prophet tells us that the condition of eschatological peace is one in which the Lord's house has been established everywhere, and all go up to the mountain of the Lord, for out of Zion shall go forth the law and the word of the Lord from Jerusalem. It assumes a kind of unity of order and a singular rule of law that applies to all of that distinction. We are not there yet, to put it mildly. As Martin Luther observed, if the lion lies down with the lamb, the lamb must be replaced frequently.

The ordinary civic peace that horrific violence disrupts and attempts to destroy offers intimations of eschatological peace and is a good to be cherished and not to make light of. It is a good we charge our public officials with maintaining. If we live from day to day in fear of deadly attack, the other goods that we cherish become difficult. Human beings are fragile creatures. We cannot reveal the fullness of our being, including our deep sociality, if airplanes are flying into buildings and cities become piles of rubble, composed in part of the mangled bodies of victims. We can neither take the civic peace for granted — as we have learned so shockingly — nor shake off our responsibility for helping to respect and to promote the norms and rules whose enforcement is constitutive of civic peace.

Saint Augustine taught us that we should not spurn worldly vocations. His famous example is the vocation of the judge, tragic because he or she can never know with absolute certainty whether punishment is being meted out to the guilty and not the innocent. But we depend on judges and on others to uphold a world of responsibility, a world in which people are not permitted to devour one another like fishes, in Augustine's pithy phrase. Public officials are charged with protecting a people. As those extraordinary firemen in New York City said simply, "It's my job. It's my job." The same holds for our military, operating within the limits I have just very briefly sketched. It's their job. The job they do flows from right authority — another vital dimension of the just war tradition, and one aimed at limiting freelance opportunistic and individualistic violence.

So even as just war permits limited resort to arms, it challenges, as I've already indicated, the "anything goes" approach to violence. Responding justly to injustice is a tall order, for it means that it is better to risk the lives of one's own combatants in certain situations than to intentionally kill non-combatants of the society with whom one is in conflict. It is often difficult to separate combatants from non-combatants, but one is obliged to try.

The restraints internal to the just war tradition encode the notion of limits to the use of force. Many of these rules and stipulations have been incorporated into various international agreements, including several Geneva conventions. During and after a conflict we assess the conduct of a war-fighting nation by how its soldiers, its warriors conducted themselves. Did they rape and pillage? Were they under careful rules of engagement, or was it a free-for-all? Was every attempt made to limit civilian casualties, knowing that in time of war civilians are invariably going to fall in harm's way?

I think we are obliged not to respond simply cynically to this attempt to limit the damage that is done. It's a very important attempt, a vital attempt, and one that our military has, certainly since its restructuring post-Vietnam, taken up. Pains have been taken to underscore the codes of ethics that derive from the just war tradition in our military academies and in the training of our Army, our Marines, our Navy and our Air Force.

Indeed, it is my impression talking to students, looking at the curricula of institutions, that no group in the country pays more attention to this question of the ethical restraint on the use of force than does the United States military in its academies. That means we do not kill or threaten to kill nearly 6,000 civilians because that number of our own civilians have been murdered by perpetrators who scarcely deserve the name of either a soldier or a warrior. We put soldiers into combat rather than unleashing terrorists. The soldier puts himself at risk as surely as the firefighter.

Now, just punishment that I've been talking about — to seek out those who have perpetrated an evil deed and to punish — is very different from revenge. Revenge repudiates all limits. Just punishment observes restraints. The course thus far chartered by the administration is admirable in its

complexity, its nuance and its restraint. The use of military force is planned, at least at this point, as one part of an overall strategy that involves decoding messages, cutting off money flows, and many other ways to go about dealing with this issue.

One sign that the President and his advisors are aware of the need for restraint is their renaming a mission that was first dubbed Operation Infinite Justice with a more modest name that does not suggest a utopian goal. Another sign is the President's repeated insistence that our response is not aimed at a whole people, a religion, an entire nation or a way of life, but is, instead, directed at those who drag their own people into harm's way, defame their religion and perpetrate an ideology that has as its end the deaths of babies, people in wheelchairs, moms and dads, brothers and sisters, grandmas and grandpas, friends and colleagues going about their daily routines.

And why should they die? Simply because they are Americans? It didn't matter if you were white or black, young or old, male or female, able-bodied or with a disability, gay or straight, Christian, Muslim or Jew. If you were in those buildings, you were slated for death. The aim of terrorism — again, let's make no mistake about it — is terror. The terrorists do not issue a set of demands. They do not say, "We'd like to negotiate the following three points." They simply murdered. That is why one does not negotiate. There is nothing to negotiate about if the end your opponent has stated clearly is your own complete obliteration. At some point the word breaks off and the call to responsible action begins.

This is an extraordinary moment in our nation's history. On September 11 we sustained a greater loss of life in a single day than ever before in our history, easily topping the previous norm for a day of death, which was the Battle of Antietam. Americans tell us that they are prepared for this different kind of war. But the numbers of those who support military action against terrorism begins to waiver when the question is put as to whether this force would be acceptable if innocent men, women and children became victims in large numbers.

As I've already indicated, no war can be fought without putting non-combatants in harm's way. The

American people favor doing everything possible to limit this damage. One reason this country wearied of the Vietnam War was the realization that fighting that war meant that we could not — given the nature of that war — distinguish combatants from non-combatants and that even without horrors like the My Lai massacre, our soldiers were put in the impossible position of regarding everyone as the enemy. That is not the case here.

So respond we must, respond we shall. We must stop those who use civilians against other civilians by turning a great symbol of human freedom of movement — the commercial airplane — into a deadly bomb. If we abide by just war restraints, we will put our combatants in harm's way to punish and interdict those who put our non-combatants in harm's way. That is the burden of the just warrior.

In the dark days of Nazi terror, there was a brave young German theologian named Dietrich Bonhoeffer, who had been moving toward pacifism, which was a rather remarkable thing for a German Lutheran under that era to be doing. He committed himself to a conspiracy to assassinate Adolf Hitler, to "cut off the head of the snake," as he put it. He asked in his letters and papers from prison, "Who stands fast?" Bonhoeffer observed that the great evil that had appeared among the German people had played havoc with all our ethical concepts, and he was particularly severe in his criticism of those who, in his words, flee from public altercation into the sanctuary of private virtuousness.

It is the vocation of those that we elect to carry the burden of political office that they must constantly deal in ways that most of us are spared from. Constantly deal with what's called in the world of political theory, "the problem of dirty hands." There are times when there are things that one must do that are not ethically pure, but they are ethically defensible given what is at stake, given the issues at hand, given the alternatives. One who cares about these, Bonhoeffer taught us, asks the following question: He doesn't say, "How can I do the right thing?" but instead, "How is the coming generation to live?"

We know what happens to people who live over a long period of time in pervasive fear, and it isn't pretty. It invites lashing out. It invites isolation from

a desire to protect oneself. It encourages over time harsh measures, and in this Thomas Hobbes was surely right. We simply cannot live as human beings if we live in constant fear of violent death.

Last week my daughter and I found ourselves having this discussion. We found ourselves discussing the possible need for a family plan should there be a biological or chemical attack. Who would pick up the children, the grandchildren? Are gas masks any protection? Should one discuss any of this with two five-year-olds and a seven-year-old who are already drawing pictures of planes flying into buildings and

asking what happens if grandma's plane is hijacked? We reassure them, knowing that the correct answer is there is no more grandma.

Of course, we all must die one day but we are called to life. Christians are taught that their savior came that believers might have life and have it more abundantly. There are times when the call to live demands action against those claimed by death. I do not believe this is contrary to our tradition. I believe it is consistent with it and with the fact that believers are claimed by a God of mercy, who is also a God of justice.

STANLEY HAUERWAS

MELISSA ROGERS: Thank you, Jean. Next we'll hear from STANLEY HAUERWAS, the Gilbert T. Rowe professor of theological ethics at Duke Divinity School. He has spent much of his career vigorously defending pacifism and has collaborated with Professor Elshtain on a work entitled, *But Was it Just?: Reflections on the Morality of the Persian Gulf War*. Those of you who are familiar with Professor Hauerwas' work may appreciate William Cavanaugh's observation about him: "Of all the great Christian pacifists over the centuries, Hippolytus, Francis of Assisi, Martin Luther King, Stanley Hauerwas is the one I would want on my side in a bar fight." What more can we say?

Oftentimes people assume that the just war tradition developed through reflection as an exception to the general Christian tradition of non-violence. There is some basis for that. Why would you even have to come up with a justification for violence if, as a matter of fact, you did not assume the priority of non-violence? The Romans did not presume that non-violence was something they were called to, although the Stoics came up with certain kinds of views about how you could think about the justification of violence. So just war from this perspective is seen as the attempt to develop a series of exceptions against the general Christian presumption against violence.

The justification that Jean gave of just war is not a series of exceptions to non-violence, but rather

assumes the priority of justice to non-violence. This is extremely important, because justice names not self-defense, but instead — as she so eloquently put it — the defense of the innocent. What "innocent" means in this context is that they did not deserve the attack. And in defense, you use only as much violence as is absolutely required to stop the attacker.

Now, in the world as we know it, we are never free from disorder. Just war presupposes that you never live in a world free of war. One of the crucial questions involved here is a question of historicity in terms of the kind of disorder actually in the world. It is one thing for the Roman Empire to think about the kinds of disorder it confronted, but it is quite another to consider the kinds of disorder in the world of international nation-states. Jean spoke, of course, of the political realism that has described that world fundamentally as a balance of power. You assume some kind of balance of power that is relatively tranquil. But that raises the question of what we mean when we say "justice." Can you talk about justice and international order? Justice normally presupposes goods that can be named in common that therefore allow you to articulate what is just and unjust.

This indicates one of the great tensions in modern accounts of just war — namely, how do you square the ability to fight a war justly when you presuppose an international arena in which justice no longer makes any sense? This was the great task of

Paul Ramsey, who tried to take a Niebuhrian account of political realism and wed it to just war. Whether that can be done or not still seems to me to be a deep question. I'm more than willing to enter in as a pacifist into that project, because just war is clearly better than political realism. I don't pretend to say that's someone else's problem. I need to take it on too.

If just war is seen as an account to produce justice, however, one of the implications is that pacifists are not just confused, but are in fact deeply immoral. Because to the extent that we refuse to take up the project of defending the innocent, we have betrayed a deep moral responsibility that shall be incumbent upon anyone, and in particular on the disciples of Jesus. In this view, of course, the disciples should have rushed back to Galilee and formed the Galilean Liberation Front to save Jesus from being killed, because that death was clearly an unjust death. It is very interesting to ask how just war people narrate the Scriptures on these grounds. It's not a question of pacifists trying to preserve some kind of purity. Hell, I'm from Texas; purity was never an option. But pacifist and just warrior alike, because of their commitments, will have to watch the innocent suffer for their convictions.

I want to raise a couple of issues about this account of just war. First, I want to ask, "What makes the outbreak of violence war?" War is an honorific term that people use to distinguish war from murder. In talking with reporters about these matters, I oftentimes bring up Hiroshima and Nagasaki as issues of just war, and they always say, "Oh, but that was war." Well, murder can occur in war. The British blanket bombing in World War II, the fire-bomb raid on Tokyo — does that mean World War II must be described as something other than war, if war is an honorific term that distinguishes war from murder?

If, from a just war perspective, you can only describe war as just war, then you need to distinguish war from what is not a just war. What is war when it is not a just war? Was America's bombing of Yugoslavia war on just war grounds? Many people have said that there's no one to declare war against in terms of the attacks on the World Trade Center. But you need to declare a war where your enemy will know

under what conditions they can surrender. Does the mere fact that you are declaring war against a terrorist organization mean that just war has somehow become unintelligible because you can only deal with state agencies? You can see then how the point about history makes a difference here. In the Middle Ages there were no state agencies. There were kings and queens and they were sovereign. How does having a bureaucratic order that you can call a state change how you think about these matters?

Secondly, I want to raise a question to the people who are committed to just war perspectives: Prior to a violent outbreak, how do you form people to be just warriors? Would the American people be ready to invade the beaches of Japan rather than drop the bomb on Hiroshima and Nagasaki? More lives would have been lost that way than Hiroshima and Nagasaki, but it would have been just. Are the American people ready to sacrifice lives to fight a war justly? What would the United States military forces look like if they were structured on just war grounds? Is the institutionalization of the military — in terms of the kinds of weapons it uses, how it is trained to use those weapons — just war training? It's too late if you just get to a situation and then say, "How do we fight it justly?" You have to prepare to fight wars in a just way. And what would a just war foreign policy look like? Just using national self-interest wouldn't cut it.

Finally, how would Christians prepare themselves for a just war? Before we receive the Eucharist, we wish one another the peace of Christ. How would that peace be understood if we said, "Except?" Christians don't develop theories of "just adultery." How is it that we develop theories of just war, and what does that do to our understanding of what we mean when we wish one another the peace of Christ? Because I take it that the deepest issue here is the doctrine of God. And when Christians cross their fingers, we turn God into a spirit, rather than the material presence found in Jesus Christ through whom we continue to be made God's material people in the world through body and blood.

What I fear about just war is that it always leads to the spiritualization of the Christian faith. And that's why I must remain committed to Christian non-violence.

JAMES TURNER JOHNSON

MELISSA ROGERS: Thank you very much. JAMES TURNER JOHNSON is a professor of religion and associate member of the Graduate Department of Political Science at Rutgers University. His books on this subject include *Just War Tradition* and *Cross, Crescent and Sword: The Justification and Limitation of War in Western and Islamic Tradition*. Professor Johnson is co-editor of the *Journal of Military Ethics* and has been praised by Professor William O'Brien as someone who is "particularly gifted in his ability to apply the just war doctrine to evolving dilemmas of contemporary deterrence and defense."

I want to briefly respond to some of the points Stanley raised and then make some fairly simple observations about the contemporary debate before concluding with some rather pointed things about the idea of just war. First, on the matter of how Christians narrate the Scriptures in connection with just war reasoning, I would suggest that in fact there was an awful lot of attention to the Scriptures in the development of the idea of just war. All one has to do is go back and read the materials and you'll see that they are full of scriptural references. This is not an idea that somehow developed out of Augustine's fertile neo-platonic imagination. On the contrary, Augustine and his successors in the Middle Ages and the early modern period who developed this idea grounded it very explicitly in passages of Scripture.

Secondly, on the matter of whether the kinds of weapons and training used by the U.S. military are appropriate for just war theory, I would say that they are, but it may not always be this way. I remember very well the debates of the early 1980s when people on the pacifist side of the line were arguing against the development of cruise missiles as war fighting weapons, and therefore inherently bad as they would increase the possibility of war. I'm awfully glad that we have them now, because it seems to me that this is an example of how the U.S. military has been configured so as to be able to fight justly. I would suggest further that the training that makes possible the insertion of relatively small groups able to fight in a discriminate and proportionate way is a much more moral way of thinking

about the training of troops than to think in terms of vast operations that necessarily have huge amounts of collateral damage.

And the third point on "just adultery" versus "just war" is a nice quip, but it presupposes that violence is what is wrong. That is basically the pacifist position. But the just war tradition says that it is not violence that is wrong, but rather the reasons that may be right or wrong. Under some conditions, violence is unjust; under other conditions, it serves justice. So you can end up on different sides of the page on this issue, depending on your presuppositions.

Now in terms of the current situation — is this war or is this criminal activity? This issue has surfaced in the debate as a way of arguing that we ought not to use military force against Osama bin Laden and Al Qaeda, that we ought instead to use the judicial process. This confuses the issue. Morally speaking, there is no difference between the use of force in the context of police action or in the context of international projections of military force. This was reflected very directly in Augustine's view of just war. The central issue was the public use of force versus the private use of force; in the Latin, *bellum* versus *duellum* or "war" versus "duel." In the tradition, any private use of force is wrong. The one who has the authority to use force is the one with responsibility for the public good and who must think about moral uses of force.

My second comment on the contemporary debate can be illustrated by something that happened on a panel that I was on last night at my university, Rutgers. Five of us were talking about the idea of the clash of civilizations and whether it is inevitable and so forth. One of the people was arguing at some length that we really are in no position to throw bombs, that everyone has sinned and therefore no one can throw the first stone; that the United States is complicit on all kinds of misery around the world and the 9/11 events are perhaps an understandable response to this. She was particularly upset about the use of the word "evil" to describe the terrorist attack. She also didn't like the word "punishment." If

you know just war, you can see that she would have some serious problems with the tradition because one of the standard items on the listing of the just cause is the punishment of evil. Well, when she finished, one of the people in the audience stood up and said, “Professor, would you say that the Nazis were evil?” She paused for a long moment and then responded: “That’s a hard question.”

I don’t think that’s a hard question. I don’t think that it should be difficult to answer that the attacks on 9/11 were evil. I think we need to do an awful lot to educate members of the American community to morally discriminate between the background noise of human imperfection and genuinely evil actions.

Finally, I want to talk about the some essential issues in just war tradition and in jihad tradition. If you look at recent debates about just war, the idea of just cause is almost always listed before the requirement of right, or sovereign, authority. The American Catholic bishops did this in 1983 and again in 1993, and I must confess that if you look at some of my works from that same period, I did the same thing. In the context of the modern period, there has been an effort to define sovereign authority in a de facto way, in terms of territory, in terms of recognition by other states. If you have x, y, and z, then you have sovereign authority. When it is defined in that morally contentless way, then the question of just cause automatically comes first.

But the question of intervention has reawakened me to something that Augustine and his medieval and early modern successors knew very well — that the central issue is the issue of authority. The central issue is the degree to which the government in question is actually serving the good of its people. Once you have made that determination, you know whether there is any possibility that the use of force is justified or not.

So in the classical just war tradition, you always began with the question of sovereign authority — the sovereign authority then had the responsibility of weighing the other issues: just cause, right intention, the purpose of restoring peace. These are the requirements specifically mentioned by Thomas Aquinas. And in contemporary discourse there is a lot of attention to the prudential requirement of

proportionality — the expectation that the use of force will do more good than harm; the requirement of reasonable hope for success; and the requirement of last resort, properly understood as the calculation that nothing else will do the job.

The treatment of right intention in contemporary discourse and debate has been just plain wimpy. It is usually put in terms of something like “an intention in line with the just cause.” That’s not what it meant originally. Augustine says about this, “What is evil in war?” It’s not the deaths of some who will soon die anyway. He mentions instead the lust to dominate, the lust of power, the cruelty of avenging, an implacable animosity towards the enemy. Having right intention is avoiding such intentions, which are the kinds of mindsets that we don’t want to have when thinking about the restoration of justice. And I would submit that they are precisely the kind of mindset that we find in the justification for responding to the terrorist attacks of 9/11.

Let me conclude by saying that there are very important overlaps between the just war and jihad traditions. First, the jihad tradition also requires right authority. Historically, the leader of the community — the caliph for the Sunnis and the imam for the Shiites — had to authorize the use of force. There was a responsibility for individuals to defend against an attack on the Islamic society. But there were very stringent restrictions placed on this. So the fatwa of 1998 which Osama bin Laden issued justifying war against Americans is simply against what the normative tradition allows in the way of defensive jihad. Furthermore, the jihad tradition includes very explicit limits on whom you may fight. There are number of traditions associated with the prophet Mohammed which include the language “you shall not kill the women and children.” Some of the traditions also include other groups of people: the aged, the infirm, the mentally incompetent. These are exactly the same kinds of lists that we find in the just war tradition and in contemporary international law of armed conflicts.

So there is no culture conflict here. There is fundamental agreement on these issues. There is good reason to say from the standpoint of Islam, as well as from the standpoint of just war tradition, that the attacks of 9/11 were indeed evil and that there is a just necessity for a response to them.

DISCUSSION

MELISSA ROGERS: Thank you all. Now I'd like to invite others to join the discussion.

DAVID SAPERSTEIN, RELIGIOUS ACTION CENTER OF REFORM JUDAISM: Let me ask you to address even more directly the issue of terrorism, particularly in terms of just means. Many of the rules that you've discussed were created in the context of state versus state, with distinct armies and civilian populations. Terrorism is different in that although the state is sometimes complicit in giving sanction, it is also often in opposition to the terrorists within its borders. Terrorists often live within civilian communities and go about their activities without their neighbors having any knowledge, whether we're talking about people in cities, towns, universities, or refugee camps. How do you apply just means issues when you're talking about the use of force against targets that intentionally locate themselves in the very fabric of civilian societies?

PROFESSOR JOHNSON: The first thing I would say is that your premise is a little wrong. You suggest that this is a uniquely modern problem. But in fact, in the 10th century there was a series of church councils in the West that established something that was collectively known as the Peace of God. The immediate problem they faced was that there were brigands who were engaging in terroristic activity. They were using force against townspeople and pilgrims and peasants on the land. And they were attacking them, not only for their own benefit, but also to dominate them; you might say, to terrorize them.

So the tradition I'm coming from has confronted this kind of situation for a long, long time. Both the effort to insist that the right to authorize force be restricted to the person or persons who are responsible for the good of the political community and the insistence that there are some people who ought not to be intentionally targeted by the use of force have their roots in responses to this kind of activity when it was encountered a thousand years ago.

As for how you apply the means test in the contemporary circumstance, the answer is you do it by using forces that are designedly capable of discrimination and proportionate use. You do it so as to try to avoid the massive uses of force that tend to maximize collateral damage — unintentional, to be sure, but nonetheless unfortunate, and to be avoided if at all possible. This means very closely targeted bombing using precision guided munitions, the insertion of small groups of force in areas that are very heavily populated by civilians among whom the terrorists are hiding, and possibly the use of larger, more conventional kinds of force against troops that may be guarding an area where someone, a group or a person whom you are trying to get at, may be sheltered.

I think Michael Walzer has it right when he argues that not only do you have the obligation to avoid direct intentional attacks, but you also have the obligation — which comes from proportionality — to try to minimize the collateral harm.

PROFESSOR HAUERWAS: In Vietnam, Ramsey argued that the Maoist strategy that was used by the Vietcong meant that when civilians were killed, it was their fault. The same was applied to ICBMs [Inter-Continental Ballistic Missiles] — if you put an offensive ICBM near Moscow, when we aim at it we're not trying to destroy the civilian population, you're just trying to destroy the ICBM, but it's an indirect effect. There's something to that logic, but I take Jean's point that it's very hard to be a human being exacting that logic when you're the soldier carrying it out.

PROFESSOR ELSHTAIN: We can imagine a number of kinds of situations that present very different challenges. The example in which those who intend to do harm are mingling indiscriminately among a civilian population and are known only when their horrible deeds take place of course presents particular kinds of challenges.

But another of the examples you offered isn't as much of a challenge to the just war tradition. That is the situation of a regime that knowingly aids and

abets and sustains terrorist networks. At that point one doesn't make a distinction between the regime and those who actually commit the terrorist deeds. They are all part of an entity that has as its end the indiscriminate killing of civilians.

JUSTIN CAPIZI, CATHOLIC UNIVERSITY:

Professor Johnson, you spoke a little bit about evil, but it seemed like you were using two different important categories: evil people and evil actions. You referred to the Nazis and to the acts of September 11th as evil. Does that at all complicate the capacity to say they both are clearly evil?

PROFESSOR JOHNSON: The general answer is you know them by their acts. You don't hate the people, you hate what they do. And thus we don't have any quarrel with Afghanistan. What we have a quarrel with is Al Qaeda, with the leaders of that movement, and with the Taliban leaders who are supporting it.

JAMES STANDISH, THE SEVENTH-DAY

ADVENTIST CHURCH: The just war tradition sounds very good in theory, they are very good principles, but they are very malleable. We can think back to the First World War, for example, where we had very Christian nations on both sides getting their guns blessed by priests, and so forth. So my question is, can this theory be applied in a principled manner in a real world? Is there a danger, in fact, in applying this principle, because it gives a sort of infallible God-sanctioned type of war? We think, for example, of the old song by Bob Dylan, "With God on Their Side." Does this sort of theory actually lead to that kind of mentality?

PROFESSOR ELSHTAIN: Within the framework of this tradition, there are certain constraints and brakes that are put on to guard against the very outcome that you suggest. The just war tradition is a very powerful argument against the bellicosity attendant upon the invocations of something akin to a crusade, an assault without limit, sacralizing the use of violence.

Have people who call themselves Christians often behaved very badly? There is no doubt about that. But there is also the other end of a continuum, if

you have pacifism and just war, and that's the crusading use of violence. And it seems that the just war tradition is one of the sturdiest available traditions that we have to guard against that.

MELISSA ROGERS: Does the just war tradition prescribe recommended ways for policy-makers to check their policy and their motives as they move forward with decisions? In other words, how is this incorporated into policymaking, or does it just rely on societal criticism?

PROFESSOR JOHNSON: Melissa, I take it your question had to do with the question of institutionalization. I was reflecting as others were talking that there is a requirement in the U.S. military that the judge advocate general's office review all new weapons proposals to determine whether they abide by the law of war and by U.S. law. There isn't any similar requirement that the chaplain corps do the same thing for the morality of proposals or that there be a corps of ethicists to do this. If there were, it would be something like what we have in the field of health research where there are ethics panels that have to review proposals and sometimes have to approve them or else you don't go forward with them. The institutionalization is different with just war. We're in the middle of an example of it right now. The debate gets carried forward and the concerns get expressed through dialogues around this city and elsewhere.

PROFESSOR HAUERWAS: Several years ago, a guy at HHS called me and said, "We're considering this policy and I need to ask an ethicist whether it's consistent with Rawls' maximin principle." And I thought, "Oh, Jesus — have we created this?"

What you have to see is that the just war tradition works within an understanding of an ethics virtue. As Jim reminds us, the ruler should have the virtue of patience. Patience is absolutely crucial; you often have to absorb much wrong, rather than seeking vengeance. Just war is a set of skills for judgments rather than ticking off points on a checklist.

PROFESSOR ELSHTAIN: There isn't anything as obvious as a checklist. But there certainly is a set of very solemn guidelines one is obliged to follow within the just war tradition. It makes this issue a

very complicated tradition within the framework of ethical and moral philosophy. It's not a consequentialist theory, but you're obliged to think about potential consequences, to think about whether the world will be more just and peaceful after the limited and discriminate use of force.

Your question also relates to a point Stan raised about what a foreign policy that paid some attention to the just war tradition would look like. Among other things, it would mean that you would have to ask yourself a whole range of questions about the kinds of measures that those who say we shouldn't have violence often favor, measures they promote as if they were in fact more just. That is not necessarily the case at all. You would have to look at something like the use of embargoes, for example, and what you are embargoing. Are you embargoing the necessities of life? Are people, including children, dying because they don't have access to necessary medical supplies or food? You would have to ask questions about that.

KEITH PAVLISCHEK, CIVITAS PROGRAM: I think we would be remiss if we didn't give Stanley a chance to respond to the classic response to pacifism, which is that were we all to become pacifists, attacks on the innocents would continue and possibly result in even a worse situation, tyranny. There is a certain type of pacifist response to that classical pacifism — the kind you find in the Schleithem Articles — that says, "We don't do that, but civil authorities need to kill and punish the evil. It's just not us Christians." I wonder if that's a reasonable response or, if not, how you respond to that kind of perspective?

PROFESSOR HAUERWAS: Well, I don't think that's a completely accurate account of Schleithem. But my response is that as a person committed to non-violence, I want to work as hard as I can to have a social order in which those who are called to the police function do not have to bear weapons. I want to do everything possible to enter into the creation of more nearly just societies in which it might even be possible for Christians to be called to the police function. Of course sociopaths exist, but there are ways to deal with sociopaths. Now, I'm not going to say that you're not going to get into some hard cases, but such cases face both a person committed to non-violence and a person committed to just war. I'm committed to trying to work within a social order to make violence less likely.

PROFESSOR ELSHTAIN: Earlier, Stanley used an example of churches where we give one another the greeting of peace. I think it is difficult for that same kind of robustness of peace to be fully attained in complex pluralistic societies. But certainly, something like civic affection binds us one to the other. That is why the shock waves of what happened on September 11 continue to ricochet and to echo, because we recognize that there is an "us," there is a "we."

When a community has been violated, we all respond appropriately to that deep violation of the body of the polity itself. And at that point, the "us" stops. One is simply obliged to do what one can to restore the ordinary peace — the *tranquilitas ordinis* it is called in the tradition, the ordinary civic peace — to restore that which has been so violently assaulted and violently attacked.

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