

Contemporary Just War Thinking: Which Is Worse, to Have Friends or Critics?

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The increasingly widespread and energetic engagement with the idea of just war over the last fifty years of thinking on morality and armed conflict—especially in English-speaking countries—presents a striking contrast to the previous several centuries, going back to the early 1600s, in which thinkers addressing moral issues related to war did so without reference to the just war idea.

From the late twelfth century to the early seventeenth century a well-defined tradition on just war enjoyed broad cultural acceptance in the West. This framed the resort to force in terms of the responsibilities of sovereign political rule and the political ends of order, justice, and peace, and established limits on conduct in the use of justified force. This tradition had been shaped by philosophical, theological, and political thinking on natural law, by military thought and practice, by legal traditions reaching back into Roman law, and by accumulated experience in the government of political communities. In the cultural context of the Middle Ages, all these overlapped and interpenetrated one another to an important degree.¹

But under the conditions of the Modern Age this cultural consensus broke down, and the various fields of influence that had shaped the earlier tradition on just war became increasingly distinct from one another and so tended to lose contact with one another.² In some arenas creative efforts to engage the idea of just war disappeared altogether: for example, the Spanish Jesuit Francisco Suarez (1548–1617) and the English Puritan William Ames (1576–1633) were the last important theological writers to do so until the twentieth century. In other arenas the ideas defined and set in relationship with one another within the historical just war tradition were redefined and rearranged into new

frames of thinking, in which these ideas remained, but their links to earlier just war tradition were downplayed and gradually forgotten.

This was the case with modern thinking on international law, which is heavily indebted to Grotius's reframing of the inherited tradition of just war into his conception of the law of nations in his influential *De Jure Belli ac Pacis* (*On the Laws of War and Peace*), first published in 1625.³ In regard to this latter line of development, I have argued that in this way the just war tradition was effectively transformed into a tradition of law, and basic concepts from the earlier tradition on just war were thus maintained as legal ideas right up to the present.⁴ A forceful presentation and documentation of this historical relationship is provided by *Classics of International Law*, a Carnegie Institution series mostly published between the two world wars.⁵ But most contemporary international lawyers ignore this historical connection between the law and the idea of just war, treating the law simply as a product of positive agreements among states.

In any case, by the beginning of the early seventeenth century the connection to the idea of just war as defined in the historical tradition had been transformed and effectively lost as a basis for creative, systematic moral reflection on war. While the Carnegie Institution series did valuable service in making available the writings of a broad variety of thinkers who worked with the just war tradition that they had inherited and who laid the groundwork for the transformation associated with Grotius, it did not lead to new systematic thinking around the idea of just war. Indeed, while its last volumes were still fresh from the press, Reinhold Niebuhr, in his important theological work *The Nature and Destiny of Man* (1941), derided and rejected what he called "the Catholic theory of a 'just war'" (despite the broad use of the inherited just war tradition by Protestant thinkers in the Reformation era) in the process of an extended criticism of the Catholic conception of natural law (which he identified with the theology of Thomas Aquinas). Niebuhr here showed no knowledge of the broader historical tradition of just war or the rich tradition of moral and political theoretical reflection associated with it, but to recognize this is part of my point about the general loss of consciousness of this tradition: in this he exemplified his generation and those before him. For his conception of just war, Niebuhr provided only a brief quote from Suarez's *Tractatus de Legibus*—including the following, which he made the focus of his criticism: "First, it must be waged by a legitimate power. Secondly, its cause must be just and right. Thirdly, just methods must be used." Niebuhr then went on to dismiss the concept as assuming "obvious distinctions" between "justice" and

“injustice” and between “defense” and “aggression,” despite the fact that judgments on these matters are “influenced by passions and interests.”⁶ Niebuhr did not know Suarez’s longer, focused, and detailed treatment of just war in the work devoted fully to it, *De Bello*, which provides an extended discussion that presents the matter of justice in war not in terms of absolute certainty (as Niebuhr wrongly argues), but in careful and nuanced language about making judgments among relative claims.⁷ The broader just war tradition is full of such discussion. But what Niebuhr read from the short passage of Suarez allowed him to make the point that he desired (which had been forged in his rejection of pacifism in the 1930s): that the use of armed force may sometimes be necessary, but that it is never without injustice and is always tragic. Thus, just war thinking, as Niebuhr depicted it, is accordingly irrelevant, introduced simply for the purpose of being rejected.⁸

THE TWO MAIN AVENUES OF CRITICISM OF JUST WAR THINKING: POLITICAL REALISM AND PACIFISM

Up through World War II and the beginnings of the nuclear age, Niebuhr’s position represented one of the major options for mainstream American Protestantism; the other was a form of pacifism based on the ideal of abolishing war through the creation of a world order by international law. In broad terms, these two options have remained as the twin avenues of criticism of the idea of just war: realism and pacifism.

While Niebuhr is generally recognized as being one of the architects of political realism (the other being Hans Morgenthau), present-day political realism has evolved into a rather more simplistic position than Niebuhr’s, having become identified with the rejection of any place for moral values in the sphere of practical politics and the insistence that political decision-making should instead be based on interests alone. This is a conception that traces to neither Niebuhr nor Morgenthau but to Robert Osgood’s *Ideals and Self-Interest in America’s Foreign Relations* (1953).⁹ From this latter perspective, what is wrong with just war reasoning is that it injects value considerations into policy and practical decisions about the use of military force by states and nonstate groups, and attempts to set limits on the use of such force even at the expense of national interests. This conception of realism is problematic on its own terms, as the interests of a state or nonstate group inherently reflect that entity’s defining values; the

interests would be worth nothing if they did not. More precisely, then, the realist criticism of just war thinking should be understood as proceeding from a clash of values between those expressed in the realist conception of national interest and those expressed in the just war idea. Understood this way, the criticism deserves attention, though it is hardly devastating to the just war idea.

The nature and effects of pacifist criticism of just war thinking are more complex and harder to evaluate. To think about pacifism more precisely, there are two main kinds that can be identified: one rooted in the moral rejection of all use of violence and another rooted in an abhorrence of the destructiveness of war, an association of war with the system of rival states, and the ideal of abolishing war by bringing into being a universal government replacing the state system.¹⁰ Each has taken a variety of historical forms, and in some circumstances they have made common cause. Pacifist criticism of just war thinking has varied accordingly. Historically, pacifism of the first sort has produced sectarian movements advocating withdrawal from society, but this is not how contemporary pacifists have operated. Rather—as we can see, for example, from the activities of the Peace Churches—they have sought to establish mechanisms for resolution of conflicts and reconciliation, both of which can be viewed as challenges to the just war–based idea that at least some conflicts require the use of force to resolve and correct injustices. A second example is that of the Pax Christi movement in American Catholicism, to whose influence the signature idea in the 1983 U.S. Catholic Bishops’ Pastoral Letter on War and Peace, *The Challenge of Peace*, can be traced: the notion that Catholic just war thinking always begins with a “presumption against war” as something inherently sinful and to be avoided.¹¹ This is a pacifist idea; just war tradition in fact treated the use of armed force under the conditions of just war as serving a moral good by combating threats to justice, good order, and peace. As for world-order pacifism, historically this was manifested in support for the League of Nations and the United Nations, and in general it shows up in opposition to any use of force that might serve national interests. Another example is provided by David Rodin’s argument (discussed below), whereby the idea of just war can be realized only in the case of a universal government that uses force to police injustice.

In my judgment, pacifist criticism has been more effective than that of political realism, in that it has pressed the idea of just war to be more in line with pacifist ideals, and has thus undermined and displaced the core conceptions of the just war idea. This shows up in various ways in contemporary just war thinking—not only

in the cases just mentioned, but in others as well. Compared to criticism from these two main enemies of the just war tradition, political realism and pacifism, though, the nature of much contemporary just war thinking poses a more serious threat to the tradition. Contemporary treatments of just war offer diverse accounts of its core values, structure, and purpose; the methodology for its understanding and use; and its relationship to political and moral life. Which one is to be believed? What lessons are to be learned for thinking about morality and the use of armed force? The answers offered are controverted, sometimes mutually contradictory, and sometimes at odds with the conception of just war as defined in the historical tradition, thus weakening the idea of just war even as it has become more widely discussed.

THE RECOVERY (AND REINVENTION) OF THE JUST WAR IDEA

From the early 1600s until the appearance of the Protestant theologian Paul Ramsey's two books *War and the Christian Conscience: How Shall Modern War Be Conducted Justly?* (1961) and *The Just War: Force and Political Responsibility* (1968), there was no serious book-length study that attempted to establish the just war idea as a proper center for either religious or secular reflection on morality and war.¹² Ramsey's method was that of a theologian, but the story is similar for political philosophy, where intellectual reflection on war had turned to world-order pacifist efforts to abolish war through the creation of some form of world order superior to the state system. In this way of thinking, the idea of war as a use of force that individual political communities might use to serve the proper purposes of political order was denied. This intellectual trend toward a form of pacifism was reinforced by the growing destructiveness of war as experienced and anticipated during the nineteenth and much of the twentieth centuries. Not until Michael Walzer characterized his purpose in *Just and Unjust Wars* (1977) with the words "I want to recapture the just war for political and moral theory"¹³ did the possibility of using the just war idea in serious political philosophical thought emerge. Ramsey's and Walzer's respective works constitute two of three pillars of the recovery of the just war idea in contemporary moral thought about war; the third is the U.S. Catholic Bishops' *The Challenge of Peace*, which, besides its influence in Catholic circles, spurred a public policy debate in the United States and parts of Western Europe that has been ongoing.

None of these three pillars built their understandings of just war on the earlier just war tradition, though the traditional conception had existed in a remarkably coherent and consistent form from the high Middle Ages until early in the modern period. That traditional conception, as noted earlier, had placed the justification of the use of armed force in the context of the responsibility of the sovereign ruler to ensure the good of the governed political community. A series of thinkers working within the inherited tradition of just war, culminating in Grotius, reshaped this original conception so as to emphasize the right of individual self-defense as the most fundamental element of natural law and defined government as the agent of a civil community that is responsible for its general defense against aggression. This idea stuck and became the bedrock of the developing conception of the law of nations and international order. It is, of course, central in the present-day conception of the state's right to resort to armed force in self-defense.

Ramsey, Walzer, and the U.S. Catholic Bishops offered three different conceptions of just war to respond to their perception of the issues at the time they wrote; and these three approaches produced conceptions of just war that not only did not connect to the earlier normative tradition but also presaged the subsequent thinking about just war.

For Ramsey, the issues to be addressed had to do principally with the nuclear debates of the 1950s and 1960s; for Walzer, the Vietnam War; and for the Catholic Bishops, the nuclear debates of the early 1980s and the nuclear strategy of the Reagan administration. Ramsey's main normative source, typical of American Protestant Christian ethicists of his generation and before, was the Christian ethic of love for neighbor, which Ramsey understood especially as manifested in Augustine's conception of the idea of *caritas* in the historical movement from the City of Earth to the City of God. He used this reading of the ethic of love to set out a position that differed from the two poles of mainstream American Protestant Christian thinking about war at the time that he wrote, which were the Niebuhrian characterization of war as sometimes necessary but always tragic and sinful, and forms of pacifism based in the ideal of a new world order and the moral rejection of war. Ramsey argued that the Christian obligation of love of neighbor both justifies the use of armed force—to protect the neighbor against unjust attack—and limits it, because one may never rightly attack anyone not involved in the use of armed force against one's neighbor.¹⁴

Walzer, for his part, built his conception of just war principally on a normative base in human rights, though he developed his exposition via a creative use of

historical examples aimed at showing a common understanding of just and unjust uses of force.¹⁵ The positive content of international law relating to war, which he calls “the legalist paradigm,”¹⁶ looms large in Walzer’s presentation of the just war idea, especially in regard to certain issues—and in particular those he develops under the rubric “the theory of aggression.” And it is fair to say that he seems to regard this paradigm as providing a kind of baseline, moral as well as legal, to which just war reasoning must refer.

As for the U.S. Catholic Bishops, while *The Challenge of Peace* argued that the conception of just war defined therein came out of the Catholic just war tradition, in fact it restated a conception of just war based on a philosophical conception of an ethic of *prima facie* duties as earlier described by James F. Childress, a religious ethicist of Quaker background, in the Jesuit journal *Theological Studies*.¹⁷ On this conception the idea of just war was made to begin with a “presumption against war,” with the various just war criteria functioning not positively, to provide guidance as to when the use of force might be a moral obligation, but negatively, to define those rare cases in which the “presumption against war” might be overturned.¹⁸ Here the primary criterion for such a possibility was that the use of force be in self-defense against attack—a conception directly reflecting international law but not historical just war tradition. This was further restricted by limits on the authority to resort to armed force and a requirement that, even in the face of manifest injustice, there must be a comparative preponderance of justice on one’s own side. The shadow of modern-war pacifism (a version of pacifism rooted in world-order pacifism and one that was likewise committed to the abolition of war), and particularly of nuclear pacifism (where opposition to war stemmed from the magnitude of destruction to be expected from the use of nuclear weapons), lay over both Ramsey’s and the Catholic Bishops’ work. While Ramsey expressly offered his understanding of just war in opposition to widespread Christian pacifism, the Catholic Bishops, in embracing the “presumption against war,” effectively accepted a basic pacifist premise about the inherent evil of war as such.

THE SUBSEQUENT DEBATE: JUST WAR REINVENTED AGAIN AND AGAIN

Against this background, the stage was well set for a proliferation of conceptions of just war, and that is in fact what we find in recent just war literature. I have

nearly forty books on my shelves (more, if collections of essays are counted) that treat the topic of just war, including Ramsey's, Walzer's, and those of the U.S. Catholic Bishops, in addition to my own work—and this is by no means a complete list of what has been published on the subject in recent decades. In the books I own, most of the authors treat just war as a positive resource for moral assessment of the use of armed force, though some treat it critically and dismissively. Yet each one understands and represents the idea of just war somewhat differently, depending on the moral perspective and method of the author; how just war is defined and its components; its purpose and proper use; the relative emphasis given to the decision to use armed force (*jus ad bellum*) and conduct in the use of such force (*jus in bello*); the moral criteria named, the order in which they are named, and the priorities among them; and the contemporary implications drawn from individual criteria and from the overall conception of just war. These differences may be taken, from one perspective, as signs of a healthy moral debate, but from another perspective they reveal a serious lack of common agreement as to exactly what “just war” means in itself and what it implies for moral reflection on the use of armed force in the contemporary context. Some examples will illustrate this.

Sometimes the difference is over what counts as defining the idea of just war itself: to take a sample from my shelf, recent books by Alex Bellamy, Davis Brown, J. Daryl Charles, Robert L. Phillips, Mark Totten, Albert L. Weeks, and Craig M. White all define just war in terms of a list of criteria for the decision to go to war (*jus ad bellum*) and for conduct during war (*jus in bello*).¹⁹ The listings of Brown and Totten are essentially the same as what I would myself give, beginning with the classic criteria of sovereign authority, just cause, and right intention, including the end of peace; then adding the prudential criteria widely applied today—reasonable hope of success, proportionality of ends, and lack of reasonable alternatives (last resort); and finally defining right conduct in war in terms of discrimination and proportionality of means. White offers a list with the same headings. All the others named, though, shift the order and priority of the criteria or combine some of them or simply do not mention certain criteria: for example, Charles and Weeks begin with just cause; Phillips starts with last resort; Bellamy begins with right intention. Where they begin telegraphs the position of these authors on what is more important or most fundamental. Several authors do not mention the end of peace (a fault also of the U.S. Catholic Bishops' listing of just war criteria), perhaps reflecting the widespread contemporary

view that war and peace are mutually exclusive. All include right authority as a requirement for a just war, though differing somewhat as to its priority. With the exception of White and Weeks, all define war-conduct in terms of the two moral criteria of discrimination and proportionality, which has become commonplace in contemporary moral writing on just war. (The tradition had instead proceeded by concrete lists of categories of persons not to be the object of direct intended attack and by lists of means of war deemed *mala in se*; the law of armed conflict follows this approach, which benefits from its concreteness.) White's book is focused only on the rightness of the war decision in the case of the 2003 invasion of Iraq and does not discuss war conduct, while Weeks's discussion of conduct in war is based not on moral argument but on the extent it complies with the law of armed conflict.

Do these differences matter? Yes, indeed. According to the historical tradition, which among these authors Totten renders best, the requirement of sovereign authority holds first priority, since the sovereign, as the one ultimately responsible for the common good of the political community, has the responsibility for dealing with wrongdoing in such a way (including the possible use of armed force) as to maintain the justice and peace of that community. On this conception, the use of armed force is just only if the one responsible for the good of the political community uses it to serve that good: this is the classic conception of *bellum iustum*. But as I have noted earlier, during the early modern period the focus shifted to one particular kind of injustice—armed aggression across a state's border—and the role of the ruler was redefined as the agent of the political community. As the moral tradition of just war was reshaped into international law, just cause, defined narrowly as self-defense against attack, became the primary criterion for the right to use armed force, and the authority criterion became “proper” or “legitimate” authority, referring to whatever person or body in a given community was charged with organizing a response to such aggression. In this way the broader concerns of justice were effectively bracketed out of consideration, and peace was understood simply as the status quo before an aggressive attack was launched or as the state of affairs between states not at war. As the nature of war itself became increasingly totalistic and more destructive, the growth of various forms of opposition to war hardened the perceived divide between war and peace, so that they were conceived as opposites: here the idea of a just war as a way to peace became an oxymoron, whereas in classic just war thinking the just use of force was conceived as a necessary tool in the service of peace.

The effects of such influences appear in the shifts in content and priorities within the various lists of the criteria used to define the just war idea by contemporary authors, including those I have singled out above. But these authors also disagree on how just war thinking should be used and to what purpose. For example, Charles and Phillips are mostly concerned with influencing the moral judgment of individuals relative to particular possible uses of armed force, while White and Weeks employ their versions of the just war criteria in a checklist fashion to demonstrate the wrongness of the decision to invade Iraq in 2003. Others, including the philosopher Jeff McMahan, have used utilitarian reasoning to define the *jus in bello* criteria so that it is all but impossible to satisfy them, and thus almost no use of force can be just. In contrast, Jean Bethke Elshtain defines her version of the just war idea within a broad discourse on politics based heavily on an interpretation of Augustine's moral and political thought to argue for the justified use of armed force to respond to serious injustice, aiming specifically at justifying the war against terrorism.

A closer look at Elshtain and McMahan as well as two other contemporary philosophers will illustrate how the perspective and ethical methodology employed in recent just war thinking vary widely, as well as how they differ from the historical just war tradition. First, let us consider Elshtain, whose moral perspective and method are broadly reminiscent of Ramsey's.²⁰ Elshtain anchors her understanding of just war in an interpretation of Augustine's moral and political thought, focused notably on *The City of God*. What matters for her are certain ideas—chiefly, justice, peace, and love—as defining the morality of the use of armed force. Armed attack is a major violation of justice and peace, thus justifying an armed response; but other violations, including uses of armed forces to repress segments of a state's own population, may also, for her, justify the use of force. Similarly, love of neighbor may justify resort to armed force when a neighbor is threatened or harmed out of malice. The classic conception of just war defined in the historical tradition, by contrast, also used Augustine as a major source, but worked from a very different set of passages, first collected by the twelfth-century canonist Gratian. These passages provided the basis for Aquinas's discussion of just war a bit more than a century later, and the conception of just war defined there was still normative for Martin Luther early in the sixteenth century. The emphasis in the historical tradition on sovereign authority (understood as responsibility for the good of the political community) derives from this set of passages; so do the definitions of just cause (in terms of reparative and punitive

justice but not self-defense) and right intention (including the end of peace, but also including avoidance of malicious intentions). All in all, this is a somewhat different conception of just war, and a significantly different use of Augustine in relation to it, from that found in Elshtain (or, for that matter, Ramsey). But this historical tradition as it came together after Augustine's time does not interest her, as it did not interest Ramsey; she believes Augustine offers the core, and her method is to reach back over the intervening history to what she considers relevant from his works. By contrast, other recent writers, including Bellamy and Totten, make a point of examining how the moral ideas have been shaped by history; their conception of the nature, purpose, and proper use of the just war idea varies from Elshtain's accordingly.

McMahan, like contemporary philosophers in general who have written on just war, treats Walzer's conception of just war as the contemporary standard, though he does so in part to criticize major elements of it. But he also shows some awareness of the historical tradition on just war and regards it as superior in important ways. In his 2005 article "Just Cause for War," published in this journal, he begins by observing that "until quite recently, contemporary just war theory and international law recognized only one cause for war: self- or other-defense against aggression."²¹ This characterization, of course, fits Walzer's treatment of the question of justification for resort to war under the rubric of "aggression" and his use of international law as defining "the legalist paradigm." McMahan argues, to the contrary, that "there can be various just causes for war other than defense against aggression, that both sides in a war can have just cause, and so on," and that this conception of just cause "has roots in an older tradition of thought." Later in the article he cites Aquinas and several early modern thinkers (including Grotius, Vattel, Vitoria, Suarez, and Pufendorf) as representatives of the "older tradition" he has in mind. While he engages these historical thinkers as partners in dialogue, McMahan does not seek to develop the positions of any of them in detail, but rather uses what they said on specific issues in which he is interested to provide a springboard for his own thought. In this connection, it is interesting that he does not note the irony that the reduction of just cause for use of force to defense against attack traces to Grotius and was advanced by Vattel and Pufendorf, later thinkers on the law of nations.

In his 2009 book, *Killing in War*, McMahan parts ways significantly with both the "older tradition" and with Walzer, arguing that the justifications for killing during war are no different from what they are in other contexts, including

individual self-defense.²² Here he returns to certain themes treated in the 2005 article, including the question of whether both sides in a war can be fighting justly (the phenomenon I have called “simultaneous ostensible justice,” first suggested by Vitoria and later taken up by Grotius). Historically, this referred to the complexity of justifications for many, perhaps most, armed conflicts, and the possibility that both sides might, as far as even an objective observer could tell, have right on their side. From it derived the idea that Walzer later called “the moral equality of soldiers” and the development of rules for conduct in war (the laws of armed conflict) that began with the assumption of such equality. In short, this line of thinking, which began with reflection on the moral complexity of war, shifted away from emphasizing the justification of resort to war to emphasizing efforts to mitigate harm done during war. McMahan, relying on the tools of analytic philosophy, places the stress back on the problem of justification, rejecting the idea of simultaneous ostensible justice, so that the cause of belligerents has to be either just or unjust (or neither). Soldiers, then, are not morally equal, since their liability to be attacked varies according to the cause in which they are fighting. Of course, McMahan provides a far more nuanced analysis of this matter than this summary characterization conveys. But we can nonetheless see from this brief look at his argument that it is in considerable tension with the historical tradition. However, the point I want to make is a deeper one: that, as I have argued extensively in my own work, the historical just war tradition reflects a complex mixture of influences, and the idea of just war developed there is not at all well rendered by a discrete methodology like that of analytic philosophy. Indeed, there is some irony in that to the degree the use of such a discrete methodology succeeds on its own terms, it distances itself from the broader idea of just war as defined in the historical tradition and the complex realities that produced it and that it seeks to engage.

The conceptions of just war—its sources, what is important in it, and what it should be understood to imply—are so different between Elshtain and McMahan as to suggest that they are not in fact talking about the same thing at all. Still other lines of variation appear when other recent philosophical writing on just war is brought into focus. Three general observations will help to set this work in context. First, philosophical attention to the just war idea is relatively recent, with the most important work appearing only within the last decade or a bit earlier. Second, in accord with what I observed at the beginning of this article, this writing on just war has come from philosophers in English-speaking countries.

And third, the philosophical work as a whole rests heavily on the conception of just war put forward by Michael Walzer in *Just and Unjust Wars*, though different scholars have used Walzer in different ways (frequently, as we have just seen in McMahan, to criticize and correct some element in his thinking, meanwhile accepting his overall treatment of just war as normative). As further examples of recent philosophical thought on just war, I will look briefly at two other philosophers recognized as having written importantly on this subject: David Rodin and Brian Orend.

Rodin's work dealing with just war includes articles and edited books as well as a major authored book, *War and Self-Defense*, published in 2002.²³ Like Walzer, he begins from a base in human rights; also like Walzer, he regards the question of self-defense as critical for the justification of the use of armed force. But unlike Walzer, who generally follows contemporary international law in its limiting a state's right to resort to force to self-defense, Rodin takes a different approach. Rodin begins with the assumption that the requirement that a state may use force only in defense is based on an analogy with the individual's right to self-defense when attacked. Then, after close examination, he argues that this analogy does not hold up, so the requirement of *jus ad bellum* is not satisfied. But if this is so, he concludes, then soldiers are not justified in fighting. As an alternative to this conception of just war, which Rodin argues is morally wrong, he sketches a normative understanding that depends on the creation of a universal state with "a world monopoly of military force together with a minimal judicial mechanism for the resolution of international and internal disputes."²⁴ Only such a state would be justified in resorting to the use of military means to enforce international law.

Rodin's conclusion, if not his analysis, turns out to share important features with the conception of just war in the historical tradition, though he makes no effort to examine the possible connections (and there are also important differences). In the historical tradition the idea of just war does not rest on self-defense, but rather is described as repairing injustice and punishing wrongdoing. But the reason self-defense is not included among the named just causes in the traditional conception of just war is that, while it assumes that everyone possesses by nature the right of self-defense against attack, just war was about something else: that is, action to set things right after such an attack and to seek to prevent future wrongdoing. As with Rodin's view, the historical conception of just war made a strong distinction between public and private use of force, but unlike Rodin it located the

right of public use of force in reparative and punitive action—arguing that the right of self-defense held by private individuals does not extend that far, and describing the justification of use of force for these purposes as rooted in the responsibility of government for the common good of the community. The requirement of sovereign authority, which held first priority in the historical tradition, had this priority precisely because sovereignty was understood to include responsibility for the good of the community as a whole. This seems essentially what Rodin wants to claim about his universal state. But of course no universal state exists; rather, there are multiple independent states. On Rodin’s analysis, these may not wage just war; only the universal state may do so. Rodin does not take up the matter central to the traditional conception of just war: the responsibility of government in each state for the common good and for maintaining relations among independent states to the same end. In contrast, Rodin provides a contemporary example of the way others before him used the just war idea to reason to world-order pacifism, in which “war” (understood as conflicts between and among states) is abolished and all use of force has the character of policing. One wonders whether, in the world as it is, the historical model, with its stress on the responsibility of individual governing authorities to uphold justice and punish injustice, does not offer a path to more serious engagement with the realities of contemporary armed conflict.

The third contemporary philosopher I want to single out is Brian Orend. (A good summary of his understanding of the ethics of war appears in the *Stanford Encyclopedia of Philosophy*, available online at plato.stanford.edu/entries/war/.) He has written two books explicitly on the ethics of war: one on Walzer’s understanding of war and justice, and one on human rights. He is a Kantian, and as such he frames the subject of his *The Morality of War* (2006) in terms of current international law and just war theory defined as “a set of moral rules which societies should follow during the beginning, middle, and end of war.”²⁴ Such a framing may lead the reader to expect a narrowly legalistic discussion, a form of the “checklist” use of just war categories I faulted earlier. But Orend does not fall into this trap, producing a discussion that is more careful and nuanced. He begins with a survey of the historical evolution of just war thinking and then explores its application in the context of a wide range of recent major military conflicts and the ongoing effort to deal with terrorism. Yet there is still the matter of thinking of this whole moral enterprise in terms of rules to be used as a checklist, as opposed to the classical just war concern of moral wisdom.

Orend's historical survey of the development of just war thinking is much too brief and, frankly, unfocused to explain how and why the normative categories defining just war—as he understands the process—came into being and developed as they did. His aim seems to be to show that the rules in which he is interested are grounded in a deep historical moral consciousness. As a result, he traces the origins of just war thinking back through Augustine to Cicero and Aristotle, but then moves rapidly to the early modern period, largely skipping over the medieval thinkers who actually gave the idea of just war coherent form. This gets the priorities all wrong: there may have been an idea of just war in Aristotle, but there was no systematic just war theory in him or in Cicero or, for that matter, in Augustine. And when modern thinkers such as Vitoria and Grotius came along (both rightly highlighted by Orend for their contributions), the conception of just war they received and worked with was one deeply shaped by the historical context in which it had taken its normative shape. Thus, the work of the medieval thinkers needs to be looked at closely. The changed historical context of the sixteenth and seventeenth centuries was a major reason why both Vitoria and Grotius (along with others who wrote on war and morality during this period) added new ideas, reconceived others, and generally contributed to the reshaping of the just war concept. Orend's method presents the outcomes (the rules defining just war as he understands them), but it does not investigate or explain how and why they came to be.

The work of each of the contemporary philosophers I have briefly commented on here has merit in its own frame, yet in each case the frame is limited, and the resulting conceptions of just war and their implications turn out to be different from one another and from the idea of just war as found in the historical tradition. In the end, these contemporary philosophical examples are three more cases of reinventions of the idea of just war.

RECOVERING THE JUST WAR IDEA (FOR REAL)

As the above discussion shows, I regard contemporary just war thinking as plagued by a number of problems. The late John Howard Yoder, a Mennonite pacifist, once privately complained to me that he found efforts to debate with just war thinkers frustrating, because it seemed to him that everyone seemed to have a different idea of just war. I am not entirely sure what to make of Yoder's complaint, since he was the author of a book that identified numerous

distinct varieties of religious pacifism, finding problems with most of them.²⁶ (How should a just war thinker, then, debate with a religious pacifist?) Nor am I prepared to say that the situation in just war thinking is quite as bad as Yoder represented it; I think there is at least a family resemblance present amid all the diversity of different accounts. Nor is diversity itself a bad thing: it provides openings for new ideas and new developments of old ones. This is why, when speaking of just war, it is better to describe it as a tradition of thought rather than as a theory. There have been many particular just war theories, but insofar as they hang together with sufficient commonalty, they all belong to just war tradition. At the same time, though, a tradition needs sufficient commonalty, a coherence of basic conceptions and agreements as to meaning and purpose. In this, a moral tradition like that of just war is like language: speakers may differ broadly as to vocabulary, pronunciation, syntax, intonation, and all the other features that make it possible to speak, say, of British English and American English while recognizing both as English. Yet at some point a local version of a language may become so different, so unintelligible to persons from different localities that it has to be recognized as a different language, as in the evolution of distinct Romance languages from a common Latin source. I suggest the same is the case with just war tradition: at some point a new direction in just war thinking needs to be recognized as no longer a form of just war thinking but as something else. Take the case of the international law on armed conflicts. As I have frequently argued (including in the discussion above), this historically developed out of the earlier just war tradition and, during most of the modern period, carried major elements of that tradition, even while recasting them in the form of law rather than that of moral discourse, refocusing them, and to some degree truncating them. But the widespread contemporary way of thinking of this law as the positivistic product of international agreements intentionally cuts the relationship to the moral tradition: the law thus conceived is simply whatever is possible for nations to agree upon. This is not a new version of the just war tradition any longer; it is a new way of thinking entirely, a new “language.”

In the case of contemporary moral discussion about just war, the danger of something like this happening—that the common features among the various discussions are submerged by the differences—is twofold. One is the separation of just war discourse among different academic or professional contexts and disciplines. This already happened in the definition of just war in different ways during the efforts to recover the just war idea in the period from the 1960s through the

1980s. The modes of discourse of Ramsey and Walzer, for example, had little in common, and this continues to be the case for their successors. The case of the U.S. Catholic Bishops illustrates a further kind of danger for just war reasoning: that of reconceiving the idea of just war itself in an effort to find reconciliation with pacifist critics.

As I have made clear, contemporary just war thought would benefit from giving more attention to the historical tradition. Having the historical tradition in mind as a point of reference would have a welcome disciplining effect, frequently lacking in contemporary understandings of just war, helping to ensure that everyone who claims to be arguing from a position in just war reasoning is, at least on major matters, speaking a common language. This would also tend to insulate contemporary just war thinking from being defined as something different: anti-war pacifism, as in the case of the U.S. Catholic Bishops; world-order pacifism, as in the case of Rodin; or an uncritical acceptance of the content of positive international law as providing the moral parameters for judging the morality of the use of armed force. And it would remind friends and critics of just war alike that there is a core substance to the idea of just war, so that just war is not whatever one wants to say it is for his or her own particular purposes.

The classic conception of just war was focused on the problems of good government, not on individual morality. It developed within a set of assumptions about such government expressed as the three ends of politics: order, justice, and peace, with justice understood by reference to historical precedents, context, and natural law, and peace defined as what Augustine had called the “tranquility” of an order ruled by the doing of justice. The three ends of politics were conceived as inter-related and mutually dependent, though the good of order had a lexical priority as necessary to ensure the other two. The requisites for a just war, or more precisely a justified use of armed force in the service of these ends, corresponded directly to them: the necessary authority to the end of order, the requirement of just cause to the end of justice, the requirement of right intention to the end of peace. As noted, this conception of just war gave first priority to restricting the authority for just war to sovereign rulers (rulers with no temporal superiors), because only persons in such positions had final responsibility for the common good of the community. It defined just cause for resort to armed force in terms not of self-defense against attack (assumed to be a right possessed by everyone in the moment of an attack), but rather in terms of repairing wrongs done and punishing wrongdoing. And it defined the purpose of such resort to force both

in terms of the avoidance of wrongdoing itself and in terms of the end of restoring or establishing peace. All this is summarized by Aquinas, but these basic terms, and this overall understanding, reflected both the specific work of the century of canonical thought before him and, more broadly, the influence of secular law and military and political practice on which the canonists drew. This conception, moreover, remained essentially intact for the next three and a half centuries. For the canonists and Aquinas, the matter of conduct in just war was understood to be regulated by the requirement of right intention, but the canon law already by their time included a definition of noncombatancy in the form of lists of classes of persons normally not to be attacked in person or property during war and a listing of means of war not to be used. In the period of the Hundred Years War this was added to by drawing from the chivalric code or *loi d'armes*, which rendered in Latin became *jus in bello*, a term subsequently used for the whole part of just war tradition defining right conduct during war.

The world in which this classic conception of just war came together and endured was, of course, very different from our own. Yet the moral values expressed in this conception, while revealed in that historical context, are not limited to it. Taking this conception of just war seriously implies, first, that the use of armed force be understood in the larger frame of a theory of good politics. If we do not agree on such a theory, then the need to find a coherent frame for talking about the use of armed force should spur efforts to find one. These concerns bear serious implications for how sovereign responsibility, justice, and peace should be thought of, both within individual political communities and in the relations between and among such communities in the world as a whole. That is, reflection on the idea of just war is not simply about the uses and limits of use of armed force, and present-day conceptions of just war that cast it in this mold are mistaking what just war is about: it is about the entire frame of life in a political community, which just war exists to serve. Second, taking the classic conception of just war seriously puts the focus on this service itself, that is, on the moral goods the justified use of armed force seeks to secure. This is very different from a conception of just war principally understood as defining limits on the use of armed force, which is itself thought of as morally tainted—a focus all too frequent in recent just war thinking. Third, taking the classic conception of just war seriously implies that present-day just war thinking should not so easily define the terms of just war as identical to those of individual morality regarding the use of armed force. These are different realms for the classic just war idea. The

responsibilities of government and of private individuals are different; their rights, accordingly, are different, and their moral imperatives are different. And, fourth, though not by any means least, reflection on the classic idea of just war as a conception formed so as to reflect wisdom garnered from various spheres of life and thought—including theology and philosophy, church and secular law, professional military life, and the practice of government—should push any contemporary just war thinker toward probing for interaction and dialogue across the normally differentiated spheres of contemporary life. I have sought to do this in my own work, and the best of contemporary just war thought does so as well. These examples show that there is no single right way to do it, but there are great differences in the degree to which such dialogue is pursued and in the end that is sought.

Finally, I want to demur once more from the idea found in much recent just war thinking that one should think of just war in terms of rules that can be applied to any and every use of armed force to tell us whether that use was just or not. Frequently this conception is underscored by the insistence that every one of the criteria must be satisfied for the use of armed force to be just, a requirement that, if taken seriously, would make unjust wars of the American Revolution, the Civil War, and American involvement in World War II. I do not deny that there may be some exceptionless moral rules regarding the use of armed force, but the problem is knowing what these are and what they imply in any given case. *That* requires moral judgment, and once one is in the sphere of moral judgment, the clarity offered by the idea of an exceptionless rule quickly becomes lost. Moreover, not all the criteria generally recognized today as part of the just war idea have the same character or the same priority. As traditionally understood, the ethics of just war is a practical art, not a science; the responsible party makes a decision, following the guidelines laid out but also attempting to discharge the responsibility given him or her to pursue justice and peace and thus serve the common good. This is a conception that corresponds to the Greek notion of ethics as having to do with *arête*, excellence achieved through practice (which includes the possibility of making mistakes and learning from them). Rules are important for this *praxis*, but they do not themselves yield the right and the wrong.

NOTES

¹ The conception of just war here was substantially defined by the canonist Gratian in his *Decretum* and the work of his two generations of successors, the Decretists and the Decretalists, and summarized and placed in a theological framework by Thomas Aquinas. This conception reflected and incorporated the influence of Western churchly thought; the recovery and development of Roman law, including the ideas of natural law and *ius gentium*; and the practical experience of government and warfare. The

classical conception of politics as directed toward the common good defined by three goods or ends (order, justice, and peace) was directly reflected in the major requirements of *bellum iustum*, just war: the good of order in the requirement that such uses of force be authorized by a temporal ruler with no temporal superior, the good of justice in the requirement that such uses of force be for regaining that which had been wrongly taken and punishing evil-doing (not self-defense against attack, which was taken to be guaranteed to all individuals and communities directly by natural law), and the good of peace in the requirement that all just uses of force aim at reestablishing and protecting peace as the result of a just order within the political community. In these just war requirements, sovereign authority was given priority because of the sovereign ruler's personal responsibility, given in the natural law, to maintain order, justice, and peace; the ability to initiate the use of armed force followed from this responsibility. The conception thus defined endured well into the modern period and was only finally reshaped into an importantly different idea in the mid-seventeenth century. For detailed examinations of this historical development, see my early books, *Ideology, Reason, and the Limitation of War* (Princeton, N.J.: Princeton University Press, 1975) and *Just War Tradition and the Restraint of War* (Princeton, N.J.: Princeton University Press, 1981). For more recent summary treatments of the framing of the idea of just war in this historical tradition, see my *Morality and Contemporary Warfare* (New Haven, Conn.: Yale University Press, 1999), pp. 44–51; and *Ethics and the Use of Force* (Farnham, U.K.: Ashgate Publishing, 2011), pp. 16–20.

- ² For a detailed discussion of this transition, see my *Ideology* and *Just War Tradition*, cited above; for more recent summary discussion, see my *Morality and Contemporary Warfare*, pp. 51–57.
- ³ Of the many translations and edited publications of this work, I prefer Hugo Grotius, *De Jure ac Pacis Libri Tres*, vol. II, in James Brown Scott, ed., *Classics of International Law* (Oxford: Clarendon Press, 1925).
- ⁴ Johnson, *Ethics and the Use of Force*, pp. 75–100.
- ⁵ Carnegie Institution of Washington, *Classics of International Law* (Oxford: Clarendon Press, 1911–ongoing).
- ⁶ Reinhold Niebuhr, *The Nature and Destiny of Man* (New York: Charles Scribner's Sons, 1964), vol. II, p. 283.
- ⁷ For important excerpts, see Gregory Reichberg, Henrik Syse, and Endre Begby, eds., *The Ethics of War* (Malden, Mass.: Blackwell Publishing, 2006), pp. 357–59. The entire work is included in the Carnegie Institution series cited above.
- ⁸ Niebuhr later returned a bit more positively to the idea of just war in an article coauthored with the Episcopal bishop and theologian Angus Dun, which made use of several of the categories drawn from just war thinking (but without systematically engaging the historical tradition as a whole) to argue against a pacifist interpretation of the meaning of Christianity. Niebuhr never again returned to this argument in later writing. See Angus Dun and Reinhold Niebuhr, "God Wills Both Justice and Peace," *Christianity and Crisis* 10 (June 13, 1955), pp. 75–78.
- ⁹ Robert E. Osgood, *Ideals and Self-Interest in America's Foreign Relations* (Chicago: The University of Chicago Press, 1953).
- ¹⁰ The historical development of these two kinds of pacifism is examined in my *The Quest for Peace* (Princeton, N.J.: Princeton University Press, 1987).
- ¹¹ National Conference of Catholic Bishops, *The Challenge of Peace* (Washington, D.C.: United States Catholic Conference, 1983), pp. iii, 22 and 26.
- ¹² Paul Ramsey, *War and the Christian Conscience* (Durham, N.C.: Duke University Press, 1961); and Paul Ramsey, *The Just War* (New York: Charles Scribner's Sons, 1968).
- ¹³ Michael Walzer, *Just and Unjust Wars* (New York: Basic Books, 1977), p. xiv.
- ¹⁴ Ramsey makes this point numerous times, in various ways, but the most concise and focused statement of it is in *The Just War*, pp. 142–47.
- ¹⁵ Walzer, *Just and Unjust Wars*, p. xvi and elsewhere.
- ¹⁶ *Ibid.*, pp. 61–62.
- ¹⁷ James F. Childress, "Just War Theories: The Bases, Interrelations, Priorities, and Functions of Their Criteria," *Theological Studies* 39, no. 3 (1978), pp. 427–45.
- ¹⁸ *The Challenge of Peace*, pp. 27–28, paragraphs 83–84.
- ¹⁹ Alex Bellamy, *Just Wars: From Cicero to Iraq* (Cambridge: Polity Press, 2006); Davis Brown, *The Cross, the Sword, and the Eagle* (Lanham, Md.: Rowman & Littlefield Publishers, 2008); J. Daryl Charles, *Between Pacifism and Jihad* (Downers Grove, Ill.: InterVarsity Press, 2005); Robert L. Phillips, *War and Justice* (Norman, Okla.: Oklahoma University Press, 1984); Mark Totten, *First Strike* (New Haven, Conn.: Yale University Press, 2010); Albert L. Weeks, *The Choice of War* (Santa Barbara, Calif.: Praeger Security International, 2010); and Craig M. White, *Iraq: The Moral Reckoning* (Lanham, Md.: Lexington Books, 2010).

- ²⁰ Jean Bethke Elshtain, *Just War Against Terror* (New York: Basic Books, 2003).
- ²¹ Jeff McMahan, "Just Cause for War," *Ethics & International Affairs* 19, no. 3 (Fall 2005), pp. 1–21, at p. 1.
- ²² Jeff McMahan, *Killing in War* (Oxford: Oxford University Press, 2009).
- ²³ David Rodin, *War and Self-Defense* (Oxford: Oxford University Press, 2003).
- ²⁴ *Ibid.*, p. 187.
- ²⁵ Brian Orend, *The Morality of War* (Peterborough, ON: Broadview Press, 2006), p. 4.
- ²⁶ John Howard Yoder, *Nevertheless: The Varieties and Shortcomings of Religious Pacifism* (Scottsdale, Pa.: Herald Press, 1971).