

REFORMED THEOLOGICAL SEMINARY

A JUST WAR RESPONSE TO THE 11 SEPTEMBER 2001 TERRORIST ATTACK

AN INTEGRATIVE THESIS SUBMITTED TO
DR. HAROLD O.J. BROWN
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There is no avoiding war; it can only be postponed to the advantage of others.

Niccolo Machiavelli

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Dale Courtney
Moscow, Idaho
Christmas, *anno Domini* 2002

Chapter 1: Introduction

I saw in the whole Christian world a license of fighting at which even barbarous nations might blush. Wars were begun on trifling pretexts or none at all, and carried on without any reference of law, Divine or human.

Hugo Grotius, *Prolegomena*

Background

The United States is at war. It was viciously attacked on September 11, 2001, and is currently engaged in extensive military campaigns overseas. The nature of this conflict raises intellectual and moral challenges.

- Is the U.S. justified in attacking sovereign states to get to the terrorists?
- Who and what should be targeted?
- What type of force should be employed to minimize civilian casualties?
- When should military forces take prisoners rather than killing al-Qaeda troops?
- Is there an ultimate plan for peace?¹

In modern history, just war discussions have assumed that war was between nation states; yet this “war on terrorism” is primarily a conflict with a non-state entity—al-Qaeda. Discussions are usually predicated upon a nation having well-defined physical boundaries, authority over armed forces, and the right to negotiate a cease-fire and surrender treaty. None of these are true with al-Qaeda.

War has been an enduring part of the human condition since the Fall, and the sinful motives for war have been numerous: the “love of violence, revengeful cruelty, fierce and implacable enmity, wild resistance, and the lust of power, and such like.”² Terrorism has become a part of life. Attacks, hijackings, assassinations, and bombings are used rou-

¹ James Turner Johnson, “Weighing War in Afghanistan on a Moral Scale,” *Christian Science Monitor*, Oct. 19, 2001.

² Augustine, *Reply to Faustus the Manichaeon*. Available from <http://www.newadvent.org/fathers/140622.htm>. Internet; accessed 01 July 2002.

tinely in other corners of the world as a method of promoting religious, political, and social revolution.

Motivation

“Every age,” said Carl von Clausewitz, has “its own kind of war, its own limiting conditions, and its own peculiar preconceptions.”³ World War I saw belligerents throwing mass upon mass onto selected objectives in hopes of wearing down the opposition—Napoleonic warfare brought to the extreme. World War II and the Korean conflict brought combined arms and the ability not to just hurl mass onto an objective but more importantly the ability to subdue the enemy through massed effects.

The terrorist attacks against America on September 11, 2001, killed more Americans⁴ than the Japanese attack on Pearl Harbor on December 7, 1941,⁵ and it brought us intimately closer to the realization that the unthinkable was now possible on our home soil—that civilians are not immune from becoming casualties. This attack on America marked a sober turning point in the way we live our lives, conduct business, operate in public transportation, and in how we employ law enforcement strategy and tactics. It emphasizes the need for the United States and all civilized nations to collaborate and make ready the innovative and dramatic efforts by which we can prevent acts of violence and crimes against humanity.

³ Carl von Clausewitz, *On War*, ed. P. Paret and M. Howard, (Princeton, New Jersey: Princeton University Press, 1976), 593.

⁴ Over 3,000 dead. See *Patterns of Global Terrorism: September 11 and Review of Terrorism in 2001*, 21 May 2002. Available from <http://www.state.gov/s/ct/rls/pgtrpt/2001/html/>. Internet; accessed 01 July 2002.

⁵ 2,403 dead. See *Pearl Harbor: A Grateful Nation Remembers*. Available from <http://www.hawaii.navy.mil/Dec7/>. Internet; accessed 01 July 2002.

As we witness societal changes, religious and cultural conflicts, and the instability caused by erosion of morals and values, we must brace ourselves for more attacks and prepare appropriate measures for managing the consequences of our sin. The just war theory is a set of ethical reflections that specify the conditions under which a just war may be declared (*jus ad bellum*) and how it must be waged (*jus in bello*). This thesis is not the complete answer to the dilemma that we face today in thwarting terrorist activity and crime, but it is a start.

Research Questions

This thesis will examine the historical just war theory to see if it is relevant and applicable to the war on terrorism. It will evaluate the historical *jus ad bellum* and *jus in bello* criteria to see if they both apply to a terrorist response. Finally, it will recommend how to best pursue a war on terrorism from a Christian perspective.

Methodology

The methodology used in this research will consist of the following: First, it will review the events leading up to 11 September, and what has transpired since then. Second, it will systematically review the anthropological nature of man in order to understand the nature of war. Third, it will examine the biblical view of war. Fourth, it will review historical considerations given to the just war theory. Finally, it will draw conclusions and make recommendations concerning the United States' response to terrorism.

Chapter 2: Chronology of Events

War is Sweet to Those Who Have Never Tried It.

Desiderius Erasmus

In this chapter, I will review the events leading up to the terrorist attack on 11 September 2001. The purpose of this review is twofold: first, to ensure that the historical sequence of events is correctly documented; and second, to discuss possible terrorist attack scenarios in the future. This will set the background for discussing a biblical response to terrorism later in this paper.

Historical Chain of Events

Factual Background

The morning of 11 September 2001 unfolded the worst act of terrorism in U.S. history⁶ and was without a doubt the greatest realization for Americans that such deadly violence can be a domestic reality. Osama bin Laden, Mohamed Atta, and the terrorist network “al-Qaeda” are now names known throughout the world.

Prior to this horrific event, the last decade has been filled with major terrorist incidents that have given clues to impending dangers to come. Here is a short chronology of the major global terrorism events in the previous decade.

- On 26 Feb 1993, a car bomb in the World Trade Center caused over \$600 million in damage, killed six, and injured 1,000.

⁶ General W. T. Sherman’s army marched from central Tennessee to Atlanta from July to September 1864. Sherman thought that bringing total war to the people of the South would shorten the war, so he waged his “scorched earth” campaign through the Carolinas and on to Atlanta. Sherman destroyed everything that could be used. He burned railroads, houses, barns, and fields. On 2 September, Atlanta surrendered. Sherman evacuated half the population and turned Atlanta into a Union Military base. Sherman left Atlanta in flames. Sherman’s march to Atlanta—pillaging, raping, and murdering—was a much greater act of terror than what occurred on 11 September. Sherman’s campaign was an act of declared war by the North; it was not technically an act of terrorism, even though he employed terrorist-like tactics and fought using unjust methods. See Charles C. Jones, Jr., *The Siege of Savannah in December, 1864 and the Operations in Georgia and the Third Military District of South Carolina during General Sherman’s March from Atlanta to the Sea*, (Albany: New York, Joel Munsell, 1874), 1-9.

- On 20 Mar 1995, a Japanese extremist group launched a coordinated attack within the Tokyo subway system by releasing the nerve agent sarin on commuter trains at rush hour, killing 12 people and injured over 5,500 others.
- On 19 Apr 1995, a truck bomb exploded outside the Alfred P. Murrah Federal Building in Oklahoma City, Oklahoma, killing 168 people and injuring hundreds.
- On 25 Jun 1996, terrorists attacked a U.S. military barracks, the Al Khobar Towers in Saudi Arabia, killing 19 airmen.
- On 7 Aug 1998, terrorists bombed the U.S. Embassies in Tanzania and Kenya, killing 224, including 12 Americans.
- On 12 Oct 2000, a suicide bomber attacked the USS Cole while in the port of Aden, Yemen, killing 17 American sailors and injuring 39 others.
- And finally, in the worst case of terrorism on U.S. soil, on 11 September 2001, 19 terrorists hijacked four airliners, crashing them into the World Trade Center twin towers, the Pentagon, and a field in Pennsylvania, killing over 3,000 people and injuring hundreds.⁷
- There have been numerous smaller attacks in Israel and throughout the entire world. For an excellent reference with statistical data, see the U.S. Department of State's *Patterns of Global Terrorism*.⁸

Signs

There were many “signs” leading up to the 11 September 2001 terrorist attacks.

- On 5 July 2001, FBI antiterrorism task force agent, Kenneth Williams, wrote a memo in Phoenix, Arizona—since known as “the Phoenix memo”—detailing the agent’s discovery of a pattern of Arab men that Williams believed to be Islamic radicals signing up for training at flight schools. The agent recommended an investigation as to whether al-Qaeda operatives were training at the schools. Despite being sent to the counterterrorism division at FBI headquarters in Washington and two field offices, including the counterterrorism section in New York, the Phoenix memo was ignored. The memo was never shared with the CIA or the White House. It was later discovered that one of 11 September hijackers did indeed train in Arizona and had al-Qaeda links.
- On 6 Aug 2001, President Bush received his daily CIA Presidential Daily Brief (PDB). In this particular brief, he received a document that mentioned al-Qaeda might hijack airliners and perhaps use hostages to secure the release of al-Qaeda leaders or sympathizers. The brief was said to address possible terrorist threats inside the US. According to Condoleezza Rice of the National Security Agency (NSA), the 6 Aug 2001 PDB made no mention that a hijacked plane would possibly be flown into a building. Administration officials had conceded that turning a plane into a suicide bomb was something that nobody had considered.

⁷ M. Thomas Davis, *Homeland Security: New Mission of a New Century*, Northrop Grumman Corporation, Jan 2002. Available online, <http://www.capitor.northgrum.com>. Accessed 1 July 2002.

⁸ *Patterns of Global Terrorism*, U.S. Department of State. Available from <http://www.state.gov/s/ct/rls/pgtrpt/>. Internet; accessed 1 July 2002.

- In August 2001, the President was briefed by the CIA on the possibility that Osama bin Laden’s al-Qaeda terrorist network might use hijacked airliners to win concessions from the U.S.⁹
- On 16 August 2001, student pilot Zacarias Moussaoui—a man the French government knew was associated with Islamic extremists—was arrested in Minnesota on immigration charges after he aroused suspicion by wanting to learn to fly jumbo jets but not land them. The Federal Aviation Administration (FAA) was notified about the arrest of Moussaoui in the days leading up to the 11 September attacks, but officials said the agency decided not to warn the airlines about the possible threat because Moussaoui was already in jail.¹⁰ When the U.S. detained Zacarias Moussaoui, the FBI did not share information of the possible threat with anyone in the White House’s Counterterrorism Security Group (CSG).¹¹ Moussaoui has since been charged with complicity in the 11 September attacks.
- President Bush’s national-security aides had been warned during the presidential transition that there was an al-Qaeda presence in the U.S., but prior to 11 September fighting terrorism had not been a top priority in the Bush Administration. There were earlier warning signs of the type of assault America could face. This paradigm of systems and bureaucracies which do not talk to one another reveals itself further by the fact that in 1995, authorities in the Philippines foiled a mass hijacking plan, masterminded by Ramzi Yousef—also known for plotting the 1993 World Trade Center bombing—whereby American planes were to be hijacked and blown up over the Pacific. More evidence of the potential for an air attack against America was discovered during the investigation of Yousef and his partner, Abdul Hakim Murad. This analysis uncovered a plan to crash a plane into CIA headquarters in Langley, Virginia.
- In 1994, French intelligence authorities discovered and foiled a plot by the Algerian Armed Islamic Group to fly an airliner into the Eiffel Tower.¹² Despite the historical leading indicators, no one compiled this available threat intelligence information; and subsequently, the U.S. was surprised that such a tactic of mass murder might be a possibility. In fact, up until the 11 September terrorist attack, FAA security policy for airline crews dealing with hijacking remained “cooperate with hijackers’ demands.”¹³

⁹ Michael Elliott, *How the U.S. Missed the Clues*, CNN, 20 May 2002. Available from <http://www.cnn.com/2002/ALLPOLITICS/05/20/time.clues/index.html>. Internet; accessed 1 July 2002.

¹⁰ Kelli Arena and Beth Lewandowski, *FAA Didn’t Warn Airlines about Moussaoui*, CNN, 20 May 2002. Available from <http://www.cnn.com/2002/LAW/05/02/inv.moussaoui.warning/index.html>. Internet; accessed 1 July 2002.

¹¹ Elliott, *Missed the Clues*.

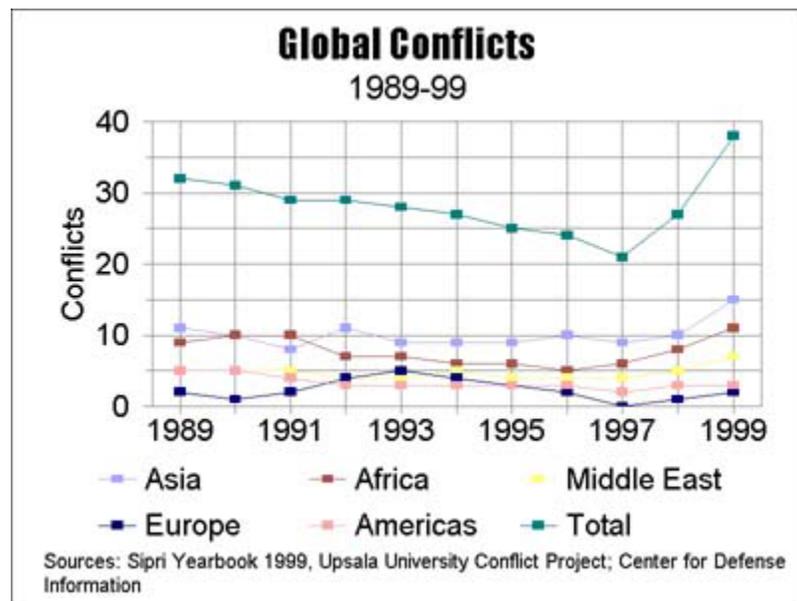
¹² *Ibid.*

¹³ Arena and Lewandowski, *Moussaoui*.

Extrapolating the Historical Events

Background

The Hart-Rudman Commission concluded in its final report that the United States will face a terrorist attack by an adversary within the next 20-30 years that will cause thousands of American casualties.¹⁴ Analysts predict that over the next 25 years, foreign crises will continue to be replete with atrocities and the deliberate terrorizing of civilian populations. Numerous cross-border wars are forecast with the most violence erupting from conflicts inside current territorial states.¹⁵



Global Conflicts 1989-1999¹⁶

Since 1968, there have been more than 10,000 recorded incidents of terrorism worldwide; yet until recently, the resulting death rates have been anywhere from 1-100 fatali-

¹⁴ Ian Roxborough, "The Hart-Rudman Commission and the Homeland Defense," *Strategic Studies Institute*, Sept 2001.

¹⁵ "Extracts from Major Reports and Key Findings," *World Global Trends*, 16 May 2002. Available from <http://www.t21.ca>. Internet; accessed 1 July 2002.

¹⁶ Ibid.

ties per event.¹⁷ Although the earlier causes of terrorism are alleged by some classical liberals to be entrenched in poverty and inferior living conditions, we are seeing a more sinister terrorist movement evolving, spurred by Islamic fundamentalist ideology.¹⁸ These modern terrorist factions have few moral qualms about mass murder and still fewer concerns about perpetrating murder on an even greater scale.

These religiously inspired terrorists welcome their own death with as much enthusiasm as they have in carrying out the deaths of their intended victims—all with the belief that God’s cause will bring them rewards in the afterlife.¹⁹ Because of this view, suicide has become the benchmark of Islamic devotion among terrorist “true believers” in the Middle East.²⁰ The Director of the FBI has stated unequivocally that it is inevitable that the United States will one day see pedestrian suicide bombers on home soil, and that we will have to learn to live with terrorist attacks against the United States.²¹ What is of greatest concern is that if weapons of mass destruction (WMD)—chemical, biological, or nuclear—should ever get into the hands of terrorist organizations, the casualties could potentially number in the hundreds of thousands or millions. It is now common knowledge that the question is not if terrorists will attack again but when and how.

¹⁷ James F. Hoge, Jr., and Gideon Rose, “How Did This Happen? Terrorism and the New War,” *PublicAffairs Reports*, Member of Perseus Book Group, 2001, 4-5.

¹⁸ “Special Report: Trends and Forecasts for the Next 25 Years,” World Future Society, 2002. Available from <http://www.wfs.org>. Internet; accessed 1 July 2002.

¹⁹ Hoge and Rose, “How did this Happen?,” 5. The Muslim who dies in combat goes to heaven, described in the Koran as a materialistic paradise of soft couches, streams and fountains, fruit trees, gardens, and vineyards, non-intoxicating drinks and food, rich garments, gold ornaments, and silver dwelling places, and a harem of eternal virgins.

²⁰ *Ibid.*, 7.

²¹ Elliott, “Missed the Clues.”

For years, the USA has dismissed terrorism as something that largely happens overseas, that American soil was somehow immune from the reach of Islamic fanaticism. Although Israelis have lived with suicide terrorism for many years, this reality is something for which most Americans have not prepared themselves. The painful lessons of 11 September have now propelled us to imagine the unimaginable. The newsreels of passenger planes crashing into the World Trade Center, the Pentagon burning, and the subsequent bio-terrorist attacks of anthrax-laden mail all send a cold realism into the American psyche that we are vulnerable and must fight back vehemently to preserve our freedom and the freedoms of all civilized people.

Ironically, it is partly because of the freedoms we cherish and the openness we enjoy as an American society that we are so susceptible to terrorism. Historically, we have associated violence against America as a remote possibility but not one that we viewed as a mortal threat to thousands of innocent non-combatants in a single terrorist act. Before 11 September, Americans have stereotypically been more concerned with the U.S. economy and employment than domestic security and safety.

The technological ability for terrorists to launch vicious attacks against civilian populations and critical infrastructure is spreading to larger numbers of terrorist organizations and individuals with each passing year. The threat of terrorism is an inescapable reality of life in the 21st century, and it has become a permanent condition which America and the entire world must address.²²

²² "President's Homeland Security Policy and Budget Priorities," Office of Homeland Security, Whitehouse, 7 April 2002. Available from <http://www.whitehouse.gov/homeland>. Internet; accessed 1 July 2002.

Borders and Ports

One of the greatest assets a terrorist has is to remain anonymous, faceless, and nameless to his identity while exercising global mobility. Security vulnerabilities in our airports, seaports, border-crossings, and other hubs of transportation and commerce are being used to gain illegal access to physical locations, such as airplanes, federal buildings, computer systems, and other restricted areas.

Our borders are typically the first physical line of defense against terrorist infiltration, but managing comprehensive control over such an extremely large area with the existing volume of traffic is an immense challenge. The U.S. shares a 7,500-mile border with Canada and Mexico along with an exclusive economic zone encompassing 3.4 million square miles.²³ Combine this with the fact that more than 500 million people enter into the United States each year, 67 percent (330 million) of which are non-citizens, one begins to understand that there are no easy solutions.²⁴

- **Cargo:** On the cargo-side of land commerce, over 11.2 million trucks and 2.2 million rail cars crossing into the United States annually.²⁵
- **Sea:** Our seaports are another access point to our borders, and no less high in traffic. By sea, 8,000 foreign-flagged ships with multinational crews make 51,000 calls in U.S. ports annually. More than 95 percent of our non-North American foreign trade arrives by ship; and of the 7.5 million ship containers that enter the U.S. each year, only 2 percent are physically inspected for illegal or otherwise unauthorized materials or goods. The rules that govern the inspection of commerce were never created with the thought that shipments might carry containers that could contain weapons of mass destruction (WMD), and it is economically self-defeating to attempt to inspect all contents of every shipment. Stoppages or slowdowns for freight inspections would have grave economic consequences globally

²³ Ibid.

²⁴ These figures are *boarder crossings*. There are many people who cross the boarders more than once per year.

²⁵ “President’s Homeland Security Policy and Budget Priorities”

since the world is dependent on commerce for goods from oil to food and every imaginable item in between.²⁶

- **Air:** In the air, U.S. and foreign airlines hauled 8.4 million freight tons to and from the United States during the year ended March 2001, a 3.6% increase from the previous year. U.S. and foreign air carriers also transported 144 million passengers between the United States and the rest of the world for the year-ended March 2001. This represents a traffic increase of 7% over the previous year. As international commerce continues to grow, so does the concern that someday again, either by air, sea, or land, terrorists will use the weakest seams of our vulnerabilities to deliver a destructive blow to the civilized world.²⁷

Conclusion

Exacerbating the previously mentioned trends is the growth of international terrorism and crime organizations. These factors contribute to increasing world conflict and instability, which further elevate concerns for public safety, protection of critical infrastructure, and weapons proliferation. These issues are major concerns for the American public, but none more so than the current headline—"the terrorist threat."

The terrorist attacks against America on 11 September 2001 killed more Americans²⁸ than the Japanese attack on Pearl Harbor on 7 December 1941.²⁹ President Bush immediately declared a "war on terrorism," and it brought us intimately closer to the realization that the unthinkable was now possible on our home soil—that civilians are not immune from becoming the brunt of conflict casualties. The focus of the remainder of this paper is on what response and level of force is appropriate from a biblical worldview.

²⁶ James M. Loy and Robert G. Ross, "Global Trade: America's Achilles Heel," *Defense Horizons*, 12 Mar 2002. Available from <http://www.homelandsecurity.org/journal/Articles/displayarticle.asp?article=33>. Internet; accessed 1 July 2002.

²⁷ "U.S. International Air Passenger and Air Freight Statistics," U.S. Department of Transportation, Office of the Assistant Secretary for Aviation and International Affairs, USDOT, Mar 2001. Available from <http://ostpxweb.dot.gov/aviation>. Internet; accessed 1 July 2002.

²⁸ Over 3,000 dead. See *Patterns of Global Terrorism: September 11 and Review of Terrorism in 2001*, 21 May 2002. Available from <http://www.state.gov/s/ct/rls/pgtrpt/2001/html/>. Internet; accessed 01 July 2002.

²⁹ 2,403 dead. See *Pearl Harbor: A Grateful Nation Remembers*. Available from <http://www.hawaii.navy.mil/Dec7/>. Internet; accessed 01 July 2002.

Chapter 3: Systematic Theology—Anthropology

War is a natural extension of nature.

Greenbow

Introduction

In this chapter, I shall examine the biblical teaching on the conduct of war. The premise of this work is that there is normative scriptural teaching and a biblical theology of warfare. Although this chapter does not exhaust the biblical data, it provides biblical warrant for just war.

I am following an evangelical belief in the organic, verbal, and plenary inspiration of the Scriptures—the only rule to direct us in how we may glorify and enjoy Him—demonstrated in its four classical attributes: necessity, authority, perspicuity, and sufficiency. I will follow *grammatico-historical* interpretation, with the Reformed emphasis on *redemptive-covenantal* development and the *present reality of the Kingdom of God* on earth.

- By *grammatico-historical*, I mean that God’s verbal revelation in Scripture is intended as a public communication and must be properly understood according to the same principles of interpretation which apply to any human, non-esoteric, literary work; and that the Scripture is interpreted correctly only when interpreted according to its letter (“literally”) in the normal, historical and grammatical sense, taking account of a text’s literary genre (whether figurative or not, etc.) and the author’s intent (as determined semantically, and by the local and broader literary contexts).
- By *redemptive-covenantal*, I mean that all of God’s post-fall covenantal administrations complemented (not contradicted) each other, being progressively revealed facets of the same underlying single promise of God which came to fulfillment in the person and saving work of Jesus Christ; that the Old Covenant and the New Covenant are one in purpose and substance, constituting a unified Covenant of Grace established by God, with both Testaments testifying to the person and saving work of Christ as the central message of the whole Bible; and that under Old Covenant administrations, the redemptive precepts and marks of ritual purity or consecration were temporary foreshadows of the Savior, being a tutor

- which taught justification by faith and led to Christ, who was the aim or purpose to which the entire Old Covenant Scriptures pointed.³⁰
- By *the present reality of the Kingdom of God*, I mean that the Kingdom—normally defined as God’s rule—already exists, commencing formally on His ascension to the right hand of God and continuing unchanged, both in character and form, until the final judgment.

God provides His people truth through His Word as expressed in three modalities:

1. Precept
2. Normative and non-normative example
3. “Good and necessary consequence”³¹

A clear precept is straightforward. As we move through example to scriptural deduction, however, the exposition becomes more difficult and the presuppositions need to be even clearer. In the discussion that follows, I will set forth the biblical and normative teaching regarding warfare. First, I shall examine the Scriptures to identify the source of war. Next, I follow with a discussion of the biblical responses to war, including addressing the pacifist objections. Finally, I discuss the just war principles of *jus ad bellum* and *jus in bello*.

As I approach this complex issue, there are four issues that must be made clear from the outset. First, that in a post-Fall world, not all evil can be avoided. Second, that just war is normative for all Christians of all ages. Third, that this theory does not try to jus-

³⁰ Anthony Thiselton, *New Horizons in Hermeneutics: Theory and Practice of Transforming Biblical Reading*, (Grand Rapids, Mich.: Zondervan Pub. House, 1992); Douglas K. Stuart, *Old Testament Exegesis: A Handbook For Students And Pastors*, 3rd ed., (Louisville, KY: Westminster John Knox Press, 2001); Gordon Fee, *New Testament Exegesis: A Handbook For Students And Pastors*, (Louisville, Ky.: Westminster/John Knox Press, 1993); Louis Berkhof, *Principles of Biblical Interpretation: Sacred Hermeneutics*, (Grand Rapids: Baker Book House, 1950); Berkeley Mikelsen, *Interpreting the Bible*, (Grand Rapids: Eerdmans, 1963); Dan McCartney and Charles Clayton, *Let the Reader Understand: A Guide to Interpreting and Applying the Bible*, (Phillipsburg, NJ: P&R, 2002). NB: These first two affirmations are from Greg Bahnsen’s *A Reformed Confession Regarding Hermeneutics*, Covenant Media Foundation, 15 March 1993.

³¹ *Westminster Confession of Faith* 1:6.

tify war but rather to bring war under the control of justice. Fourth, that private individuals do not have the right to resort to force—that is the jurisdiction of civil government.³²

The Source of War

Before we can determine a biblical response to war, we need to determine the cause of war. The Bible presents man's sin as the source of war.

But if you have bitter jealousy and selfish ambition in your heart, do not be arrogant and so lie against the truth. This wisdom is not that which comes down from above, but is earthly, natural, demonic. For where jealousy and selfish ambition exist, there is disorder and every evil thing.³³

Where do wars originate? James tells us that wars come from our Adamic nature. He also informs us that our violence begets more violence.

What is the source of quarrels and conflicts among you? Is not the source your pleasures that wage war in your members? You lust and do not have; so you commit murder. And you are envious and cannot obtain; so you fight and quarrel. You do not have because you do not ask.³⁴

The source of war is internal and spiritual—our sinful desires as a selfish, prideful people who love the world. It is the spirit of Cain: the spirit of quarreling and fighting. It shows that we are not right with God and living according to His guidance. There can be no hope for doing away with war until its root cause, sin, is adequately dealt with.

Current psychological and sociological humanistic models hold that man is inherently good and will flourish in a “positive” society. The biblical ethic holds that man is fallen, wicked, and in need of a Savior. As a case in point, we have the biblical example of Cain and Abel.

³² Arthur F. Holmes, *The Just War*. Available from http://www.ivcf.org/crisis/the_just_war.html. Internet; accessed on 1 July 2002.

³³ James 3:14-16. All Scriptures cited are taken from the *New American Standard Bible*, Copyright ©1960, 1962, 1963, 1968, 1971, 1972, 1973, 1975, 1977, 1988, by The Lockman Foundation.

³⁴ James 4:1-2; c.f., Romans 7:5; 7:23; Galatians 5:17; Colossians 3:5.

So it came about in the course of time that Cain brought an offering to the LORD of the fruit of the ground. And Abel, on his part also brought of the firstlings of his flock and of their fat portions. And the LORD had regard for Abel and for his offering; but for Cain and for his offering He had no regard. So Cain became very angry and his countenance fell. Then the LORD said to Cain, ‘Why are you angry? And why has your countenance fallen? If you do well, will not *your countenance* be lifted up? And if you do not do well, sin is crouching at the door; and its desire is for you, but you must master it.’ And Cain told Abel his brother. And it came about when they were in the field, that Cain rose up against Abel his brother and killed him.³⁵

The Bible plainly tells us why Cain killed Abel. “And the Lord had regard for Abel and for his offering; but for Cain and for his offering He had no regard.”³⁶ God was not looking for the “right” offering, and Abel happened to pick it.³⁷ Rather, Abel was acceptable to God; therefore, his offering was acceptable as well.

By faith Abel offered to God a better sacrifice than Cain, through which he obtained the testimony that he was righteous, God testifying about his gifts, and through faith, though he is dead, he still speaks.³⁸

The Bible does not say that God had respect for the offering and therefore for Abel—that is reading into the account more than is there. Rather, God had respect for Abel. By faith, Abel offered the more acceptable sacrifice. It was the faith of Abel that made him acceptable before God, not the nature of the gift itself.³⁹

However, Cain was not living by faith; he was living for himself, attempting to please God by his offering. The faithless Cain hated the faithful Abel, despising the fact that his brother was right with the Lord. God cautioned Cain that sin was crouching at the door.

Then the LORD said to Cain, ‘Why are you angry? And why has your countenance fallen? If you do well, will not *your countenance* be lifted up? And if you do not do well, sin is crouching at the door; and its desire is for you, but you must master it.’⁴⁰

³⁵ Genesis 4:3-8.

³⁶ Genesis 4:4-5.

³⁷ Grain and fruit offerings were valid offerings under the ceremonial law. cf. Leviticus 2:1-11; Numbers 18:12.

³⁸ Hebrews 11:4. cf. Proverbs 15:8, 21:27.

³⁹ John D. Currid, *Introduction to Biblical Theology*, Tape 1, RTS Virtual Campus, 2000.

⁴⁰ Genesis 4:6-7; cf. James 1:15.

Sin is the source of war. Cain's type of desire and prideful anger is the root cause of violence and war. His inward desires were unfulfilled, so in his jealousy he murdered his brother. Sin is ugly and irrational. It rears its ugly head in selfish desire and pride, and will not be satisfied since the sinner will not conform to God's wishes and will not come to God in faith.

However, Cain was not the first to use violence in the Bible. Man's first introduction to violence comes from God Himself. "So He drove the man out; and at the east of the garden of Eden He stationed the cherubim, and the flaming sword which turned every direction, to guard the way to the tree of life."⁴¹ God drove Adam and Eve out of the Garden, expelling them from His presence. The first use of the sword was by God Himself, placing the Cherubim to keep man from returning to the Tree of Life.⁴²

Just as God drove Adam and Eve from His presence, He will separate the sheep from the goats, driving the latter from His presence. "Then He will also say to those on His left, 'Depart from Me, accursed ones, into the eternal fire which has been prepared for the devil and his angels.'⁴³

The first use of violence was God's in the Garden, and the last use of violence will be God's in the Day of Judgment.⁴⁴ From this, we can conclude that violence is not inherently evil or categorically sinful since God participates in it.

⁴¹ Genesis 3:24.

⁴² cf. Numbers 22:23; Joshua 5:13; 1 Chronicles 21:16-17; Hebrews 1:7.

⁴³ Matthew 25:41.

⁴⁴ cf. Matthew 7:23; Psalm 6:8; 119:115; 139:19; Luke 13:27.

Though God first introduced violence into the world, Cain used it sinfully. Instead of violence serving God's purposes and His justice, Cain's use was self-seeking. We see that when man takes it upon himself to use violence, it escalates.

And Lamech said to his wives, 'Adah and Zillah, listen to my voice, you wives of Lamech, give heed to my speech, for I have killed a man for wounding me; and a boy for striking me; if Cain is avenged sevenfold, then Lamech seventy-sevenfold.'⁴⁵

Cain's use of aggression leads to Lamech's escalation of violence. We see this in Lamech's actions based on his perverse understanding of what God did in Cain's life.⁴⁶

As we have seen, sin is the source of our warring, desires, and lusts. Until we deal with the sin problem, we will continue to have wars. James chapters 3 and 4 provide a foundational exposition for the cause of war.

Biblical Response to War

Categorical Pacifism

Not all Christians will agree with the exposition that follows for two reasons. First, because of disagreements about the relationship between Old and New Testaments. Christian pacifists believe the New Testament takes us beyond the Old to the law of love. Second, they disagree about whether and to what extent the Christian should participate in civil government and its exercise of force. Those in the Anabaptist tradition usually have a doctrine of two kingdoms: the earthly/political vocation and the heavenly/spiritual vocation. Christians have their citizenship in the latter kingdom, so they refuse to serve in the military or participate in war.⁴⁷

⁴⁵ Genesis 4:23-24.

⁴⁶ cf. Genesis 49:6.

⁴⁷ Arthur F. Holmes, *The Just War*.

The just war theorist takes exception with these two presuppositions. First, he sees the law of love in the Old as well as the New Testaments with the New fulfilling, reinforcing, and interpreting the Old rather than annulling and abolishing it. The law of love reaffirms the spirit of the Old Testament Law and is at one with the spirit of justice rather than in conflict with it. Love as well as justice requires action to protect the innocent and to repel and deter aggression. Second, Christian just war theorists usually hold that the spiritual is to pervade and transform the political and other earthly tasks. They therefore have a mandate for full participation in all morally legitimate governmental functions, including military action.⁴⁸

These two issues represent the dividing line between two markedly different theologies, so that wherever classic Anabaptist (including Mennonite) theology and “peace churches” (Quakers, Brethren) prevails, pacifism usually results; and wherever Reformed, Thomistic, or Lutheran theology prevail, cautious participation in government and in limited war is allowed. Disagreement about war is not simply a disagreement about the meaning of some biblical texts. It relates to entire theological systems and resultant views of the Christian’s place in society.⁴⁹

One Christian approach to the issue of war is categorical pacifism—the view that we should never involve ourselves in any conflict or war. Yet, the apostle Paul says that “if possible, so far as it depends on you, be at peace with all men.”⁵⁰ He does not say, “Be at

⁴⁸ Arthur F. Holmes, *The Just War*.

⁴⁹ Arthur F. Holmes, *The Just War*.

⁵⁰ Romans 12:18; cf. 14:17; 14:19; 2 Samuel 20:19; Psalm 34:14; 120:5-7; Proverbs 12:20; Matthew 5:5; 5:9; Mark 9:50; 1 Corinthians 7:15; 2 Corinthians 13:11; Galatians 5:22; Ephesians 4:3; Colossians 3:14-15; 1 Thessalonians 5:13; 2 Tim. 2:22; Hebrews 12:14; James 3:16-18; 1 Peter 3:11.

peace with all men.” Rather, his exhortation is that *as much as it is in my control*, I am to be at peace with all men.

While peace is good, the categorical pacifist position is unrealistic, unloving, and unbiblical. We live in a fallen world. Peace is not always possible, is not always loving, and is not always just. Love is not in conflict with justice, and sometimes love and justice demand that we engage in warfare. For example, suppose someone takes my children. To say that the most loving thing to do is to avoid dealing with justice is loving the criminal at my children’s expense—placing peace over justice.⁵¹ Often, pacifists think that the opposite of justice is love; but the opposite attribute of justice is injustice. Others want to set forth a God whose only characteristic is indiscriminate love. However, love and peace are not the only values in Christian ethics, nor are they the only attributes possessed by God.

Warfare is sometimes a realistic necessity. It is not contrary to Christian values; in fact, warfare can be an outworking of the Christian faith. We see this clearly in the book of Hebrews.

Who by faith conquered kingdoms, performed acts of righteousness, obtained promises, shut the mouths of lions, quenched the power of fire, escaped the edge of the sword, from weakness were made strong, became mighty in war, put foreign armies to flight.⁵²

Nowhere in the book of Hebrews or in the entire Bible is there an indication that anyone did sinful things by faith.⁵³ God never uses corrupted paradigms to make eternal principles. Through faith, some were made mighty in warfare; this means that faith can be expressed through warfare. That is not to say that *all* wars are an expression of faith—but some are.

⁵¹ Greg L. Bahnsen, *A Christian View of War*, n.d.

⁵² Hebrews 11:33-34.

⁵³ As Bahnsen rightly notes, there is no analogy to the “Christian prostitute” or any other negative similes.

God is likened to a warrior.⁵⁴ He is referred to as “Mighty Warrior”⁵⁵ and trains His warriors for battle.⁵⁶ In fact, 251 times in the Bible God is called *Jehovah of Hosts*—Lord of armies.⁵⁷ The Lord even declares Himself a warrior: “The Lord is a warrior; the Lord is His name.”⁵⁸ This is consistent with Jesus’ view of Himself: “Do not think that I came to bring peace on the earth; I did not come to bring peace, but a sword.”⁵⁹ Christ Himself has military titles such as “Captain of the Lord’s Hosts.”⁶⁰ Our last picture of Him is as Commander in Chief of the armies of heaven.⁶¹ Not only is the Lord Himself a warrior,⁶² but many of the prophets and other honorable men were military men.⁶³

There are five clear ways in which Scripture demonstrates that categorical pacifism is unbiblical. First, when Christ dealt with people, He did not hesitate to admonish their sins. However, He never rebuked anyone for being in the military; rather, He used the institution to illustrate spiritual principles of the kingdom. Christ never suggested that men should seek discharge from a military unit. When He dealt with the Centurion, He strongly commended him as possessing greater faith than anyone in Israel possessed.⁶⁴ If his resignation were necessary to confirm his repentance and faith, would the Lord not have addressed it?

⁵⁴ Isaiah 42:13.

⁵⁵ Psalm 45:3; cf. Isaiah 49:2; 63:1-6; Hebrews 4:12; Revelation 1:16; 19:15; 19:21.

⁵⁶ 2 Samuel 22:35; cf. Psalm 18:33-34; 144:1.

⁵⁷ To name a few: 1 Samuel 1:3; 1:11; 4:4; 15:2; 17:45; 2 Samuel 6:2; 6:18; 7:8; 7:26-27; 1 Kings 18:15; 2 Kings 3:14; 19:31; 1 Chronicles 11:9; 17:7; 17:24.

⁵⁸ Exodus 15:3. cf. Numbers 10:35; Numbers 21:14; Joshua 5:13; Joshua 10:11; Judges 5:4, 13, 20, 23, 31, etc.

⁵⁹ Matthew 10:34.

⁶⁰ Joshua 5:15. I take this to be a Christophany.

⁶¹ Revelation 19:19.

⁶² Joshua 5:13-15.

⁶³ e.g., Abraham, Moses, Caleb, Joshua, Gideon, Jonathan, David, etc.

⁶⁴ Matt 8:5-13.

Second, recall John the Baptist's words to the Roman soldiers:

He therefore *began* saying to the multitudes who were going out to be baptized by him, 'You brood of vipers, who warned you to flee from the wrath to come? 'Therefore bring forth fruits in keeping with repentance'...And the multitudes were questioning him, saying, 'Then what shall we do?'...And *some* soldiers were questioning him, saying, 'And *what about* us, what shall we do?' And he said to them, 'Do not take money from anyone by force, or accuse *anyone* falsely, and be content with your wages.'⁶⁵

John the Baptist calls the people to repentance, yet he does not rebuke the soldiers for serving in the Roman army. In fact, he told them to be excellent soldiers, not abusing their position of authority. John's exhortation to the soldiers would not be possible if military service were evil *in se*. Augustine says in a sermon on the son of the centurion:

If the Christian Religion forbade war altogether, those who sought salutary advice in the Gospel would rather have been counseled to cast aside their arms and to give up soldiering altogether. On the contrary, they were told: 'Do violence to no man...and be content with your pay.' If commanded them to be content with their pay, he did not forbid soldiering.⁶⁶

Third, we have the example of Cornelius in Acts 10.

Now *there was* a certain man at Caesarea named Cornelius, a centurion of what was called the Italian cohort, a devout man, and one who feared God with all his household, and gave many alms to the *Jewish* people, and prayed to God continually.⁶⁷

We are told that this Centurion was a devout, God-fearing man—as was his household. The Lord had Cornelius dispatch some of his men (one a devout soldier) to bring Peter to Caesarea.⁶⁸ Upon concluding his teaching, Peter baptized Cornelius and his entire household.⁶⁹ If military service were principally wrong for a Christian, Peter would have directed Cornelius to resign his commission; but Peter makes no such statement.

⁶⁵ Luke 3:7-8, 10, 14.

⁶⁶ Augustine, *Epistulae Ad Marcellinus*, 138. Available from <http://www.newadvent.org/fathers/1102138.htm>. Internet; accessed 1 July 2002.

⁶⁷ Acts 10:1-2.

⁶⁸ Acts 10:5.

⁶⁹ Acts 10:48.

Fourth, Paul makes use of the “Armor of God” analogy, calling Christians to engage in the militant struggle of spiritual warfare.⁷⁰ That Paul uses the example of a Christian warrior demonstrates that being in the military is not sinful *per se*. Paul could not use a fundamentally evil model to illustrate God’s mode of sanctification.

Finally, Paul writes to Timothy “suffer hardship with *me*, as a good soldier of Christ Jesus. No soldier in active service entangles himself in the affairs of everyday life, so that he may please the one who enlisted him as a soldier.”⁷¹ Again, the Apostle Paul would not have used a wicked simile of a “good soldier of Christ” to demonstrate the focus of the gospel.⁷²

In summary, the Bible does not teach categorical pacifism, nor does it teach that military service or warfare is inherently sinful. Because we live in a fallen world, peace is not always possible, though we should strive to achieve it.

Conclusion

We have seen that a Christian response to war begins by considering the biblical cause of war—man’s sin. James tells us that wars originate from our Adamic nature. The source of war is internal and spiritual; it is our sinful desires. It demonstrates that we are not right with God and are not living according to His guidance.

⁷⁰ Ephesians 6:10-20; cf. Romans 13:12; 2 Corinthians 6:7; 10:4; 1 Thessalonians 5:8.

⁷¹ 2 Timothy 2:3-4

⁷² It would be similar to saying that we should be “prostitutes for Christ”—a simile that does not convey the message of the gospel.

Chapter 4: Biblical Studies

In order for a war to be just, three things are necessary. First, the authority of the sovereign...Secondly, a just cause...Thirdly, a rightful intention.

Thomas Aquinas

Introduction

In this chapter, I shall examine the biblical teaching on the conduct of war. The premise of this work is that there is normative scriptural teaching and a biblical theology of warfare. Although this chapter does not exhaust the biblical data, it provides biblical warrant for just war.

Just War

jus ad bellum (The Right to go to War)

We have seen that the source of war is man's sin. War is due to sin, its causes are evil, and its consequences are evil. War becomes the tragic remedy necessary to stem the violence that arises from selfish and sinful desires. War is always a sign of spiritual failure on the part of the sinful nation that is assailing. This is because the ways of peace have not conquered the sinfulness that leads to violence.

As I examine the biblical texts, especially those from the Old Testament, I am following the "general equity" tenet from the Westminster Confession of Faith.

To them also, as a body politic, he gave sundry judicial laws, which expired together with the state of that people, not obliging any other, now, *further than the general equity thereof may require.*⁷³

General equity demands the justice, wisdom, and continuing authority of the moral validity and use of the Mosaic judicial laws. General equity does not require that our laws

⁷³ WCF 19.4, emphasis mine.

be identical to those of the Old Testament,⁷⁴ but it does say that the Old Testament examples justify parallel ethical considerations today.

God hates aggressiveness and attacks on peaceful nations.⁷⁵ We should attempt to make every reasonable effort to avoid war.⁷⁶ A nation often will send emissaries on a mission of peace. Since they were envoys of the state, they had lawful authority in that jurisdiction. They are to be granted diplomatic immunity.

Now it happened afterwards that the king of the Ammonites died, and Hanun his son became king in his place. Then David said, 'I will show kindness to Hanun the son of Nashash, just as his father showed kindness to me.' So David sent some of his servants to console him concerning his father. But when David's servants came to the land of the Ammonites, the princes of the Ammonites said to Hanun their lord, 'Do you think that David is honoring your father because he has sent consolers to you? Has David not sent his servants to you in order to search the city, to spy it out and overthrow it?' So Hanun took David's servants and shaved off half of their beards, and cut off their garments in the middle as far as their hips, and sent them away. When they told *it* to David, he sent to meet them, for the men were greatly humiliated. And the king said, 'Stay at Jericho until your beards grow, and *then* return.'⁷⁷

David's delegates were rejected and publicly humiliated. This action by the Ammonites toward the Hebrew ambassadors was sufficient cause for King David to go to war.⁷⁸ An attack on the ambassador was tantamount to an attack on the nation itself.

The most obvious reason for going to war is if a nation itself has been attacked or invaded. We see classic examples of this principle in the wars of Judah. Judah was invaded by the Moabites,⁷⁹ Midianites,⁸⁰ the Philistines,⁸¹ and the Syrians.⁸² Even if formal war

⁷⁴ For an intra-Reformed debate over the continuing validity of the civil Law of Moses, see Greg Bahnsen's *By This Standard: The Authority of God's Law for Today* (Tyler, TX: Institute for Christian Economics, 1985); *No Other Standard: Theonomy and Its Critics* (Tyler, TX: Institute for Christian Economics, 1991); *Theonomy in Christian Ethics* (Phillipsburg, NJ: P&R, 1984); and *Theonomy: An Informed Response*. For a critique of the theonomic ethic, see Westminster Seminary's response, *Theonomy: A Reformed Critique*, ed. William S. Barker & W. Robert Godfrey, (Grand Rapids, Mich: Academie Books, 1990).

⁷⁵ Jeremiah 9:8-9; cf. Psalm 28:3; Jeremiah 5:26;

⁷⁶ Ecclesiastes 9:18.

⁷⁷ 2 Samuel 10:1-5

⁷⁸ 2 Samuel 11:1.

⁷⁹ Judges 3:12-30.

has not been declared before a nation is attacked or invaded, that nation has the right to defend itself.

Another reason for legitimately going to war is to aid an attacked ally. The problem here is one of what constitutes an ally in the biblical sense. We see two examples where Israel was told not to ally itself.

And I will fix your boundary from the Red Sea to the sea of the Philistines, and from the wilderness to the River *Euphrates*; for I will deliver the inhabitants of the land into your hand, and you will drive them out before you. You shall make no covenant with them or with their gods. They shall not live in your land, lest they make you sin against Me; for *if* you serve their gods, it will surely be a snare to you.⁸³

When the LORD your God shall bring you into the land where you are entering to possess it, and shall clear away many nations before you, the Hittites and the Girgashites and the Amorites and the Canaanites and the Perizzites and the Hivites and the Jebusites, seven nations greater and stronger than you, and when the LORD your God shall deliver them before you, and you shall defeat them, then you shall utterly destroy them. You shall make no covenant with them and show no favor to them.⁸⁴

Treaties are not to be made with nations that hate Yahweh. In fact, entering such treaties may bring about covenant curses upon the nation. However, once a faithless covenant is entered into, it must be honored. The classic example is seen in Joshua 9:1-10:10. The Gibeonites deceived Joshua into believing that they were foreigners come to worship Yahweh. Israel made a covenant with them, and later found out that they were under the ban and should have been exterminated; yet Israel honored the oath and did not destroy them. In fact, when the Gibeonites were later attacked by the five Amorite kings, Joshua and the Hebrews came to their rescue; and the Lord went before Israel and confounded the Amorite kings, delivering them into the hands of the Israelites. We learn from this

⁸⁰ Judges 7:1-22.

⁸¹ 2 Samuel 5:17-25.

⁸² 1 Kings 20:1-21.

⁸³ Exodus 23:31-33.

⁸⁴ Deuteronomy 7:1-2.

account that national covenants should not be made with God-haters; but once entered into, they must be honored.

As we have seen, the state has the power of the sword to protect its citizens.⁸⁵ This extends to the protection from aggressions both internal—from crime to acts of domestic terrorism—to external acts of aggression and terrorism. In the event that a nation is attacked, there is no question that it is justified in protecting itself in a defensive war.

***jus in bello* (Justice in War)**

We have now come to the question of the biblical prescription of *jus in bello*: conducting a just war. As we shall see, war is not any means to the end as long as the end is a good one; even the means to the end must be good. God provides rules for warfare. The means must be discriminate and proportional. God does not sanction all-out war to exterminate the enemy.⁸⁶ There is always a proportionate use of force—no overkill, even in a just cause.

We shall also discover that God tells us to use only that amount force which is necessary to restore the peace that has been destroyed by the aggressor, carefully distinguishing civilians from combatants and mandating a discriminate use of violence—not against non-combatants, casualties, or POWs. Soldiers are carefully to confine their acts of military hostility to enemy combatants. Civilians are not to be treated cruelly or unnecessarily killed; and even in peacetime, a soldier is to conduct himself circumspectly among the civilian community.⁸⁷

⁸⁵ Romans 13:1-4.

⁸⁶ I will comment later about Holy Wars of Jehovah.

⁸⁷ Luke 3:14.

Constituting the Militia

We saw earlier that war is evil, its causes are evil, and its consequences are evil. Under no circumstance may a soldier take pleasure in war. “He has scattered the peoples who delight in war.”⁸⁸ Since warfare is not outside the domain of God’s moral order, He has provided right and wrong ways for conducting war.⁸⁹

Take a census of all the congregation of the sons of Israel, by their families, by their fathers’ households, according to the number of names, every male, head by head from twenty years old and upward, whoever *is able to* go out to war in Israel, you and Aaron shall number them by their armies.⁹⁰

We see from this passage that the recruiting age was twenty,⁹¹ and it was to be of males only.⁹² The army was divided into bodies of 1,000, 100, and 50;⁹³ and in Maccabean times, 10 each under its own captain.⁹⁴

In Deuteronomy 20, the Bible says specific things about the conduct of war. We see that God wishes military men to be strong and courageous and for war to be conducted properly. God has rules concerning warfare, and He retains His sovereign disposition in fighting warfare.⁹⁵

First, God desires warriors to be strong and to fight courageously.

⁸⁸ Psalm 68:30d; cf. Psalm 120:6-7; James 4:1; Proverbs 17:5.

⁸⁹ “It is well that war is so terrible, else we should grow too fond of it,” Robert E. Lee, Battle of Fredericksburg, 13 December 1862.

⁹⁰ Numbers 1:2-3.

⁹¹ Numbers 26:2; 2 Chronicles 25:5; cf.; Numbers 1:18; 1:22; 1:26; 14:29; 32:11; Exodus 30:14.

⁹² cf. Numbers 1:18; 1:22; 1:26; Exodus 6:14-19. For an excellent discussion on the role of women in the military and combat, see Bob Needham and George Knight’s *Women in the Military and in Combat* – the committee report to the 68th General Assembly of the Orthodox Presbyterian Church.

⁹³ Numbers 31:14; 1 Samuel 8:12; 2 Kings 1:9; 2 Chronicles 25:5.

⁹⁴ 1 Maccabees 3:55.

⁹⁵ I am indebted here to Pastor Doug Wilson of Christ Church, Moscow, Idaho, for his thoughtful teaching through the book of Deuteronomy during the Sunday morning service. On 10 June 2001, he preached on Deuteronomy 17:1-20 and on 5 August 2001 on Deuteronomy 20:1-20. Much of what follows is drawn from that material.

When you go out to battle against your enemies and see horses and chariots *and* people more numerous than you, do not be afraid of them; for the LORD your God, who brought you up from the land of Egypt, is with you.⁹⁶

Horses and chariots were the pride of ancient military might, and Egypt was renowned for them. Israel did not have them, and they were instructed not to worry about having them. God uses means; but since He does not have our idolatrous values, He does not value the means that we value. This is because there is arrogance and pride that trusts in military might.⁹⁷

Egypt cultivated just such a military might. Israel, however, was never to fear an enemy's horses and chariots because the outcome of a battle would never be determined by mere military strength.⁹⁸ The command not to be afraid of the enemy was based on the fact of God's faithfulness. He had already proven Himself faithful to Israel in bringing her up out of Egypt, and He would continue to be faithful to His covenant promises.

Moreover, he shall not multiply horses for himself, nor shall he cause the people to return to Egypt to multiply horses, since the LORD has said to you, 'You shall never again return that way.'⁹⁹

We see that horses were limited.¹⁰⁰ Horses were an offensive weapon in warfare, an ancient equivalent of the army tank division. This was a temptation for the kings of Israel. Egypt was a great breeder of horses, and Israel wanted to be a strong military power like Egypt and other nations.¹⁰¹ However, God says that it is wrong to have power just for the sake of power; it is wrong for the king to amass weapons to himself.

⁹⁶ Deuteronomy 20:1.

⁹⁷ cf. Psalm 20:7; 33:16-17; Isaiah 31:1; 37:24-25.

⁹⁸ Isaiah 31:1-3; Hosea 14:3.

⁹⁹ Deuteronomy 17:16.

¹⁰⁰ cf. 1 Samuel 8:11; 2 Samuel 8:4; 1 Kings 1:5; 4:26; 10:26-28; 2 Chronicles 9:25; Psalm 20:7; Isaiah 36:8-9; Hosea 14:3.

¹⁰¹ Isaiah 31:1-3; Jeremiah 42:14; Ezekiel 17:15.

On the verge of battle, the priest of God declared words of encouragement to the army.

Now it shall come about that when you are approaching the battle, the priest shall come near and speak to the people. And he shall say to them, ‘Hear, O Israel, you are approaching the battle against your enemies today. Do not be fainthearted. Do not be afraid, or panic, or tremble before them, for the LORD your God is the one who goes with you, to fight for you against your enemies, to save you.’¹⁰²

Before the army set forth, worship was conducted¹⁰³ and sacrifices were offered to consecrate the battle,¹⁰⁴ necessitating the presence of the priest. The priest accompanying them was also a constant reminder that Yahweh was with them to fight their battles¹⁰⁵— mustering His host and summoning to battle His “consecrated ones.”¹⁰⁶ The Hebrews used to anoint a “priest for the war,” and he would declare these words to them. The men of Israel would hear from God first, knowing the cause was just and that God was going before them to fight in it.

God places further limits on the volunteers, however.

The officers also shall speak to the people, saying, ‘Who is the man that has built a new house and has not dedicated it? Let him depart and return to his house, lest he die in the battle and another man dedicate it. And who is the man that has planted a vineyard and has not begun to use its fruit? Let him depart and return to his house, lest he die in the battle and another man begin to use its fruit. And who is the man that is engaged to a woman and has not married her? Let him depart and return to his house, lest he die in the battle and another man marry her.’¹⁰⁷

Even when the volunteer army was called up, there were three humanitarian exemptions from service. All three of them were related to foundational issues, showing that the

¹⁰² Deuteronomy 20:2-4. cf. Numbers 10:8-9; Numbers 31:6; Judges 20:27-28; 1 Samuel 14:18; 1 Samuel 30:7-8; 2 Chronicles 13:12.

¹⁰³ Joel 3:9; cf. Numbers 10:8-9; 31:6; Judges 20:27-28; 1 Samuel 14:18; 30:7-8; 2 Chronicles 13:12.

¹⁰⁴ Micah 3:5; Jeremiah 6:4; 22:7.

¹⁰⁵ cf. Exodus 14:13-14; Deuteronomy 1:30; 3:21-22; 7:17-24; 20:1; 20:4; 31:6-8; 31:23; 32:29-30; Joshua 1:1; 1:5-7; 1:9; Judges 1:2; 6:16; 7:9; 11:29; 1 Samuel 17:45-47; 19:5; 30:7-8; 2 Samuel 5:22-24; 22:18; 1 Kings 20:28; Psalm 18:34; 76:3; Jeremiah 46:15; Amos 5:8-9; Zechariah 10:5.

¹⁰⁶ Isaiah 13:3.

¹⁰⁷ Deuteronomy 20:5-8.

nation of Israel was not permitted to forget what it was fighting for—a life of peace under the blessing of God. The three exemptions were a newly built house, a newly planted vineyard, and a newly engaged or newly wed husband.

If someone had a newly built house, he was exempt from war.¹⁰⁸ The very thing for which the man was to fight and protect had not yet been accomplished. Those who had newly built homes did not need to give up their right to enjoy them.

In addition, if he had a newly planted vineyard, he was exempt.

And when you enter the land and plant all kinds of trees for food, then you shall count their fruit as forbidden. Three years it shall be forbidden to you; *it* shall not be eaten. But in the fourth year all its fruit shall be holy, an offering of praise to the LORD. And in the fifth year you are to eat of its fruit, that its yield may increase for you; I am the LORD your God.¹⁰⁹

Again you shall plant vineyards on the hills of Samaria; the planters shall plant and shall enjoy *them*.¹¹⁰

It is a five-year process from planting a vineyard to having mature grapes. The purpose of biblical warfare is to preserve a way of life and to enjoy what was being protected.¹¹¹ If a man were newly engaged or married, he was not to be drafted—he was to have a year with his wife to make her happy.

In an extended discourse, Calvin discusses these three exemptions.

By this indulgence God shews how just it is, that every one should enjoy peaceably what he possesses; because, if it be hard that men on account of war should be deprived of the use of their new house, or of the produce of their vineyard, how much more harsh and intolerable it will be to deprive men of their fortunes, or to drive them from the lands which they justly call their own! Since, therefore, it is expedient for the state that vineyards should be sown or planted, and that houses should be built, whilst men would not address themselves to these duties with sufficient alacrity, unless encouraged by the hope of enjoying them, God gives them the privilege of exemption from fighting, if they be owners of new houses which they have not yet inhabited. He makes also the same appointment as

¹⁰⁸ cf. Nehemiah 12:27; Psalm 30:1.

¹⁰⁹ Leviticus 19:23-25.

¹¹⁰ Jeremiah 31:5.

¹¹¹ cf. Isaiah 65:22; Ephesians 1:13.

to possessors of vineyards, if they have not yet tasted of the fruit of their labor, and will not have men torn from their affianced wives until they have enjoyed their embraces... We now understand the substance of this passage, viz., that, when every man's right is asserted to enjoy what he possesses, it extends so far as that a man who has built a house should not be dragged unwillingly to war, until by dwelling in it he shall have received some advantage from the expenses incurred. To make a vineyard common, or to profane it, is equivalent to applying the vintage to the common uses of life; for it was not lawful, as we saw under the First Commandment, to gather its first-fruits, as if it were as yet uncircumcised; therefore the recompence for their industry and diligence is made when those who have planted vines are thus set free, until they have enjoyed some of their produce. As regards the betrothed, although it seems to have been an indulgence granted in honor of marriage, that they should return to the wives whom they had not yet enjoyed, yet it is probable that they were not torn away from the dearest of all possessions, in order that every man's property should be maintained. Besides, if the hope of progeny were taken away, the inheritance would be thus transferred to others, which would have been tantamount to diverting it from its rightful owner. We have said that the lazy and timid were sent home, that the Israelites might learn that none were to be pressed beyond their ability; and this also depends upon that rule of equity which dictates that we should abstain from all unjust oppression.¹¹²

The whole point of defensive war is to preserve homes, families, and property. However, those who were fearful or fainthearted were not to serve.

Then the officers shall speak further to the people, and they shall say, 'Who is the man that is afraid and fainthearted? Let him depart and return to his house, so that he might not make his brothers' hearts melt like his heart.'¹¹³

Cowards were excluded from serving. Israel was not to be afraid to fight because their God is a Warrior God who goes before them. Yahweh casts down His enemies using Israel as His means. They were not to be fearful because fear demonstrated a lack of faith in the sovereign God. When Joshua took charge of Israel after the death of Moses, the Lord Himself told Joshua to be strong and courageous.¹¹⁴ A lack of trust in God's ability to fight for them would affect the strength of their will. If a weak will were not controlled by faith from the very first, it would lead to fear, terror, and even to panic before their enemies. Therefore, if the soldiers failed to listen to the priest, they would become fearful

¹¹² John Calvin, "Harmony of the Law, Sixth Commandment," *Commentaries on the Four Last Books of Moses, Arranged in a Form of a Harmony*, Volume Third, Translated by Rev. Charles William Bingham, (AGES Software, Albany, Oregon, 1998), 140-141.

¹¹³ Deuteronomy 20:5-8. This would cut the numbers drastically in the modern, self-indulgent world.

¹¹⁴ Joshua 1:6-9.

and experience defeat.¹¹⁵ The reason given here for exempting them is that cowardice is contagious.¹¹⁶ Having a coward in their midst would demoralize the courage of the other soldiers.¹¹⁷ As Calvin notes,

A different principle applies to a fourth class, because the faint-hearted and lazy are not deserving that God should have consideration for their cowardice, when they shun dangers to be incurred for the public welfare; but because it concerns the whole people that soldiers should go forth readily to war, God will not have more required from any one than he is disposed to bear.¹¹⁸

In addition, there was to be no standing army in the land.

And it shall come about that when the officers have finished speaking to the people, they shall appoint commanders of armies at the head of the people.¹¹⁹

There were no regular officers in Israel and no draft; rather, the Hebrews had a volunteer army, a type of militia system that was called upon for special purposes in special times. The problem with the draft is that any country that has to *force* its men to war is a country not worth defending. Samuel warns Israel about a conscripting king.¹²⁰ This is because an army that is drafted is not free.

God says that the men who go to war are to be preferred for their experience. The fighting was done by those who had already had the opportunity to establish themselves—men who had something at stake and who were settled down.¹²¹

Fighting The War

God provided *jus in bello* rules for warfare in Deuteronomy 20.

¹¹⁵ John F. Walvoord, Roy B. Zuck, *The Bible Knowledge Commentary: Old Testament Edition*, (Victor Books, 1985).

¹¹⁶ Deuteronomy 20:8.

¹¹⁷ cf. Numbers 13:31-14:3; 32:9; 1 Corinthians 15:33.

¹¹⁸ Calvin, “Harmony of the Law, Sixth Commandment,” 140.

¹¹⁹ Deuteronomy 20:9.

¹²⁰ 1 Samuel 8:10-18.

¹²¹ This is the reverse of the United States’ military—fighting with disconnected young men and women. This is not the way free people fight.

When you approach a city to fight against it, you shall offer it terms of peace. And it shall come about, if it agrees to make peace with you and opens to you, then it shall be that all the people who are found in it shall become your forced labor and shall serve you. However, if it does not make peace with you, but makes war against you, then you shall besiege it. When the LORD your God gives it into your hand, you shall strike all the men in it with the edge of the sword. Only the women and the children and the animals and all that is in the city, all its spoil, you shall take as booty for yourself; and you shall use the spoil of your enemies which the LORD your God has given you. Thus you shall do to all the cities that are very far from you, which are not of the cities of these nations nearby. Only in the cities of these peoples that the LORD your God is giving you as an inheritance, you shall not leave alive anything that breathes. But you shall utterly destroy them, the Hittite and the Amorite, the Canaanite and the Perizzite, the Hivite and the Jebusite, as the LORD your God has commanded you, in order that they may not teach you to do according to all their detestable things which they have done for their gods, so that you would sin against the LORD your God.¹²²

Holy War

The cities against which they would fight are divided into two categories. The first are within the territory of Canaan and are to be utterly destroyed as an act of Holy War.¹²³ The reason for this is two-fold. First, this is divine judgment upon these nations in particular.¹²⁴ Second, even in defeat the pagans could become victors.¹²⁵ We see this in the example of the Amorites who would conquer the Hebrews culturally though Israel had won militarily.

Is the Holy War example nominative today? Are we in the same position as Old Testament Israel, conducting Holy War of Jehovah? I will argue later that God gave positive commands for a particular time and place to impose a special curse of mass capital punishment upon the Canaanite tribes when Israel occupied the land. This guidance from God has a unique roll in the history of redemption and cannot be taken as normative for Christians today.

¹²² Deuteronomy 20:10-18.

¹²³ cf. Deuteronomy 7:1-4; Deuteronomy 7:16; Numbers 21:2-3; Numbers 21:35; Numbers 33:52; Joshua 6:17-21; Joshua 9:24; Joshua 9:27; Joshua 10:28; Joshua 10:40; Joshua 11:11-12; Joshua 11:14.

¹²⁴ Genesis 15:16.

¹²⁵ Deuteronomy 20:18.

Cities Not Under the Ban

The second categories of cities are outside the boundaries of the Promised Land.¹²⁶ This passage from Deuteronomy discusses siege warfare. An offer of peace is to be made.¹²⁷ If accepted, the people become vassals yet are treated with a degree of mercy.¹²⁸ They are taken prisoner instead of being executed, and their goods may be confiscated.

If they retaliate, then every male will be put to the sword,¹²⁹ the spoils belonging to Israel.¹³⁰ Calvin writes, “Even in lawful wars, cruelty is to be repressed, and bloodshed to be abstained from as much as possible...Even those whom He has armed with his authority, He would still have disposed to clemency, and He represses their ardor, lest they should stain with blood the swords given them by His permission.”¹³¹

When an enemy is taken prisoner, he is treated in a humane manner, but he should not be granted the sentimental forgiveness so commonly demanded by people today. He is still a combatant while the countries are at war. When Ahab was excessively tolerant in his treatment of his cruel adversary, Syrian king Ben-hadad, God sent a prophet to Ahab to pronounce judgment and death for forfeiting a God-given victory.¹³² Prisoners of war are not to be indulged but rather are to be treated as prisoners.

¹²⁶ Deuteronomy 20:15. These are non-Canaanite cities, cities that are not under the ban.

¹²⁷ Deuteronomy 20:10. cf. 2 Samuel 20:18-22; Isaiah 57:19; Zechariah 9:10; Luke 10:5-6; Acts 10:36; 2 Corinthians 5:18-6:1; Ephesians 2:17

¹²⁸ Deuteronomy 20:11. cf. Leviticus 25:42-46; Joshua 9:22-23; Joshua 9:27; Joshua 11:19-20; Joshua 16:10; Judges 1:28; Judges 1:30-35; 1 Kings 9:21-22; Psalm 120:7

¹²⁹ Deuteronomy 20:13. cf. Numbers 31:7-9; Numbers 31:17-18; 1 Kings 11:15-16; Psalm 2:6-12; Psalm 21:8-9; Psalm 110:1; Luke 19:27; 2 Thessalonians. 1:7-9

¹³⁰ Deuteronomy 20:14. cf. Numbers 31:9; Numbers 31:12; Numbers 31:18; Numbers 31:35; Joshua 8:2; Joshua 11:14; 2 Chronicles 14:13-15; 2 Chronicles 20:25; Psalm 68:12; Romans 8:37

¹³¹ John Calvin, *Harmony of the Law: Volume 3*, pg. 41.

¹³² 1 Kings 20:29-43.

Siege Warfare

Before invoking violence, Israel was to offer articles of peace to non-Canaanite cities.¹³³ If the terms of surrender are rejected, then they were to besiege the city, to wait them out by cutting off their supplies and starving them out.

God also gave rules concerning the use of the land during war.

When you besiege a city a long time, to make war against it in order to capture it, you shall not destroy its trees by swinging an axe against them; for you may eat from them, and you shall not cut them down. For is the tree of the field a man, that it should be besieged by you? Only the trees which you know are not fruit trees you shall destroy and cut down, that you may construct siegeworks against the city that is making war with you until it falls.¹³⁴

When the siege was long, the Israelites were still not to lay waste to the country around them. Needless destruction of life-giving resources is forbidden because of the long-term consequences to the land and people. Israel was to remember why they were fighting—destroying death and fruitlessness, not taking possession of a smoking wasteland.¹³⁵ Total destruction of a culture and of its livelihood is not the godly way to wage war. There are to be no wars of annihilation—not in a just war. War is to be waged against the combatants and not against the earth, so destructive power is to be used discriminately.

Subterfuge, Deceit, and Stratagems

Finally, Scripture explicitly allows the use of subterfuge, deception, and stratagems in the context of warfare. In Exodus 1:15-21 we have the example of Hebrew midwives lying to Pharaoh about killing the Israelite male babies. In Joshua 2, we see the example of Rahab lying to the King of Jericho about the spies she was hiding. The context of their

¹³³ cf. 2 Samuel 20:18-22; Isaiah 57:19; Zechariah 9:10.

¹³⁴ Deuteronomy 20:19-20.

¹³⁵ cf. Matthew 3:10; 7:15-20; 21:19; Luke 13:7-9; John 15:2-8; Ecclesiastes 9:14; Jeremiah 6:6; 33:4; Ezekiel 17:17.

“lying ethic” is not in their personal ethics but rather that of a nation in a state of war. Similarly, we see Joshua using deception during the battles in Canaan as did others who followed him. The use of spies for reconnaissance gathering is clearly mandated in Scripture.¹³⁶ God blessed Caleb and Joshua for faithfully reporting the intelligence they had gathered in Canaan.

In Jeremiah 38, when the prophet is interrogated by the king concerning the event of the siege, he prudently, in compliance with the king’s orders, concealed the real matter from the nobles, assigning a different, though not a false reason, for the conference which he had had. Similarly, Abraham called Sarah his “sister,” a name used at that time to denote a near relation by blood, thus concealing the circumstance of her being his wife.

Defensive Warfare

Now we come to the question of defensive warfare. As we have seen in Scripture, other than the example of Holy War against cities under the ban, we have no right to aggressive warfare. Unless God has warranted the taking of life, property, or freedom, it is immoral; and any killing brought about is murder.

However, God does permit killing for self-preservation, defense, and lawful execution. Nevertheless, even in the case of lawful execution, not everyone has the right to execute. Only the State, lawfully invested with the power of the sword, may execute.¹³⁷

The Westminster Confession of Faith states that a Christian magistrate may enter into warfare upon just and necessary occasion.

It is lawful for Christians to accept and execute the office of a magistrate when called thereunto; in the managing whereof, as they ought especially to maintain piety, justice,

¹³⁶ cf. Numbers 13:1-33.

¹³⁷ Romans 13:1-7.

and peace, according to the wholesome laws of each commonwealth, so, for that end, they may lawfully, now under the New Testament, wage war upon just and necessary occasions.¹³⁸

Biblical Jurisdictions

What about wars of intervention? Do we not have an obligation to help our neighbors?¹³⁹ Even if a nation's cause were good, do we have the right to interfere in the affairs of other autonomous nations? This is a jurisdictional question.¹⁴⁰ For example, in the family jurisdiction it is good for parents to teach their children to brush their teeth and learn table manners. If my neighbor is lax and irresponsible on this matter, do I have the right to go into his home and take over the control and discipline of his children? In the ecclesiastical jurisdiction, there are things done by people in professedly Christian churches that are contrary to God's Word, sinful things engaged in without repentance even by the leaders. Do we have the right to excommunicate them when they are not under our lawful jurisdiction?¹⁴¹

What about an intervening war in other countries? Do nations have moral responsibility in the name of justice for what happens in other régimes? Where does God tell us that we have the right or obligation to intervene even in a just cause? This falls upon the messianic pretense of the State.¹⁴² Good intentions, even in a just cause, are not sufficient to

¹³⁸ *WCF* 23.2.

¹³⁹ Matthew 19:19, 22:39.

¹⁴⁰ By jurisdiction, I mean the circumscribed area of lawful authority that someone or something has as given by God. Following Abraham Kuyper's lead in "sphere sovereignty," there are three foundational jurisdictional authorities that God has established and sanctioned: family, church, and state. See Abraham Kuyper's *Lectures on Calvinism, Lecture Three: Calvinism and Politics*. Available from <http://www.kuyper.org/stone/preface.html>. Internet; accessed 1 July 2002. The "Stone Lectures on Calvinism" were six lectures delivered at Princeton University in 1898 under the auspices of the L. P. Stone Foundation. I will not develop the matter further here, but sin alone has necessitated the institution of governments, and all authority of governments on earth originates from the sovereignty of God alone.

¹⁴¹ Greg L. Bahnsen, *A Christian View of War*, Covenant Media Foundation, n.d.

¹⁴² For an excellent discussion of the messianic pretense of the state, see Rousas J. Rushdoony's *Christianity and the State* (Vallecito, Calif.: Ross House Books, 1986) and *The Messianic Character of American*

make war morally right. We are not allowed to meddle in the affairs of other nations. *Like one who takes a dog by the ears is he who passes by and meddles with strife not belonging to him.*¹⁴³

We cannot guarantee the freedom and just treatment of others. Just because the cause is just does not mean that anyone can become the police power in dealing with the injustice. There must be a right to intervene. The subject of jurisdictions is a moral issue, and in the case of national wars it is restricted to the lawful authority of the state. Politicians who choose intervention by war are always expending the lives, money, and freedom of others. They have no right to do that except where God has authorized.

The state is an agency of coercion. Whenever the state decides to help one person or group, it must coercively take that help from other people. In such cases, the people who are taxed are not the ones who benefit. Does the state have the right to spend our sons' blood for its political ends, even in a just cause?¹⁴⁴

Conclusion

We have seen in the Bible all of the qualifications for a war to be just. It must have a just cause—self-defense; must be declared by the jurisdiction of a lawful authority—the state; and it must be fought in a particular way—by offering peace, not seeking total destruction, and by applying proportional and discriminate use of force.

Education: Studies In The History Of The Philosophy Of Education (Vallecito, Calif.: Ross House Books, 1995).

¹⁴³ Proverbs 26:17.

¹⁴⁴ The question is whether God has justified the United States to intervene in all matters around the world, being the *de facto* policemen of the world.

Chapter 5: Church History

The purpose of all war is peace.

St. Augustine

Background

While a complete examination of the entire history of the just war tradition from the fourth century until the present is beyond the scope of this work, I shall cover the main historical thinkers that have led to the current understanding of just war. The Christian just war theory is a 1600 year-old attempt to answer the questions “When is it permissible to wage war?” (*jus ad bellum*) and “What are the limitations on the ways we wage war?” (*jus in bello*). Just war is the ethical notion that under certain circumstances it is not sinful to participate in war.

The Christian just war theory has a diverse background. It is influenced not only by Biblical considerations but also by secular ones. As James Turner Johnson explains,

Just war is an historical tradition formed by experience and reflection, including much that is neither specifically theological (or even religious), nor philosophical. It has been strongly influenced by international law, the traditions of chivalry, and soldierly practices derived from the experience of many battles.¹⁴⁵

According to Johnson, just war theory incorporates theology, moral reflection, philosophy, chivalric custom, military practice, ecclesiastical canon law, secular civil law, and diplomatic precedent among rulers. The just war theory has been addressed by pagans such as Plato, Aristotle, Cicero, Livy, Sallust, and Virgil; by Christian theologians such as Augustine, Thomas Aquinas, and Calvin; by confessions of the church, such as the Westminster Confession of Faith; and by canon lawyers, e.g., Vitoria, Suárez, Gentili, and Grotius.

¹⁴⁵ James Turner Johnson, *Just War Tradition and Low-Intensity Conflict* in “Legal and Moral Constraints on Low-Intensity Conflict,” Alberto R. Coll, et al. eds. 1995, p. 148.

Until the conversion of Constantine, early Christians generally opposed Christian participation in war. However, among early church fathers, Clement of Alexandria, Eusebius, and Ambrose defended the just use of force. A definitive theology defining and severely limiting war has existed since the fifth century when Augustine, taking Scriptural precepts and borrowing from the ideas of Plato and Cicero, formulated the just war theory.

From St. Augustine until the tenth century, just war theory was given little attention. Whereas the theologians seldom paid much attention to the question of war, the canon lawyers discussed it a great deal. In the mid-twelfth century, Gratian wrote his classic *Concordia Discordantium Canonum*, generally called the *Decretum*. Drawing on the just war teachings of Augustine and many Greek, Roman, and Germanic scholars, the *Decretum* was a collection of previous theories of writers, theologians, philosophers, and academicians in one treatise on just war.

While Gratian added little to the theory, his *Decretum* made Augustine's ideas public to the canon lawyers, eventually producing two successive waves of theorists in the following century.¹⁴⁶ The Decretists and the Decretalists focused on limiting legitimate authority to make war to secular powers.¹⁴⁷ Their most significant contribution was that a just war should avoid noncombatants and innocent civilians who did not bear arms—women, children, elderly, and the physically and mentally handicapped. In the Decretists and Decretalists, we see some of the first developments of *jus in bello*, particularly regarding proportionality in war.

¹⁴⁶ Frederick Russell, *Just War in the Middle Ages*, 86.

¹⁴⁷ James Turner Johnson and John Kelsay, *Just War and Jihad*. (New York: Greenwood Press, 1991), 14.

Augustine's teachings have been followed-up, summarized, and articulated by Thomas Aquinas and were adopted by the Reformers as well as the early modern Protestant and Catholic natural law theorists. In this chapter, I shall briefly review the historical teaching on just war from a Christian perspective and examine, not exhaustively but substantially, the thoughts of these theologians on the development of the theory. The purpose is to inform ourselves as to whether our means of prosecuting the war on terrorism is just. I shall follow an historical timeline of the authors because theologians, secularists, and canonists all refer to each other across time periods.

Cicero (Marcus Tullius) (106-43 BC)

Cicero, the Roman writer, statesman, orator, and jurist, was one of the first to deal with the issue of just war. Cicero held that the use of force was justifiable when war was declared by proper authorities acting within specific limits. For Cicero, the authority to wage war resided with the state and could be lawfully conducted only after an official demand for satisfaction has been submitted or warning has been given and a formal declaration made.¹⁴⁸

For since there are two ways of settling a dispute: first, by discussion; second; by physical force; and since the former is characteristic of man, the latter of the brute, we must resort to force only in case we may not avail ourselves of discussion. The only excuse, therefore, for going to war is that we may live in peace unharmed; and when the victory is won, we should spare those who have not been blood-thirsty and barbarous in their warfare.¹⁴⁹

Cicero developed this position in connection with his ideal of a state ruled by reason's laws. As nature endowed man with a desire for peace and order and with the power of

¹⁴⁸ David J. Bederman, Reception of the Classical Tradition in International Law: Grotius' De Jure Belli Ac Pacis, *Emory International Law Review* 1, 31-32 (1996).

¹⁴⁹ Marcus Tullius Cicero, *de Officiis* [on Duty], I, 34-35. Available from http://www.constitution.org/rom/de_officiis.htm. Internet; accessed on 1 July 2002. cf. Andrew R. Dyck, *A commentary on Cicero, De Officiis* (Ann Arbor : University of Michigan Press, 1996).

reason that makes possible an ordered society, true law is right reason in accordance with nature. It is unchanging and universal. It calls us to duty, even to our enemies; it precludes treachery; it requires that even war be governed by moral law.

The rules of war Cicero articulated were the first explicit formulation of just war rules but with some marked differences from later Christian versions. First, Cicero defines a just cause as the defense of honor as well as of peace and justice. He thinks it legitimate to revenge a dishonor. Later Christian forms reject this and confine just cause to the defense and restoration of peace. Second, while Cicero talks of humane treatment, Christian writers go further and require merciful treatment of enemies. These differences arise from the fact that while Cicero's just society is ruled by natural law and reason, the Christian concept of justice is pervaded by a concept of a love for one's enemies—a love that goes the second mile, ruling out vengeance and unconcern toward the enemy.¹⁵⁰

Augustine of Hippo (356-430)

Introduction to Augustine's Thought

Quid enim culpatur in bello—What is blameworthy in war? So begins the Bishop of Hippo's longest discussion concerning war. Just war theory is rarely discussed without first starting with Augustine. Writing at the beginning of the 5th century, Augustine is the first theologian to begin talking about the justice of a Christian engaging in warfare. Augustine did not develop a systematic thinking but saw clearly that he needed to come to grips with evil. However, Augustine did not write his attitude on just war in a political,

¹⁵⁰ Arthur F. Holmes, *The Just War*.

cultural, or literary vacuum.¹⁵¹ He had many authors, both pagan and Christian, who exerted significant influence upon him and his ideas—starting with his mentor, Ambrose,¹⁵² and the writings of Cicero.¹⁵³

Until his conversion to Christianity, Augustine was steeped in pagan philosophy, especially neo-Platonism and Manichaeism. Against the attack by pagan philosophers that the sack of Rome was due to the moral corruption of Christianity, Augustine penned his famous defense, *The City of God*. In it, Augustine takes a theological-polemical tact rather than a moral-ethical one and articulates the notion of the type of war in which Christians can participate—a war deemed just.¹⁵⁴

This section focuses on nine specific texts that concern just war in the Augustinian corpus. The texts considered are:

- The Free Choice of the Will (*De libero Arbitrio*),¹⁵⁵ 1.5
- Reply to Faustus, the Manichaeon (*Contra Faustum, Manichaeum*),¹⁵⁶ 22.70–79
- Seven Questions Concerning the Heptateuch (*Quaestiones in Heptateuchum*), VI, question ten.¹⁵⁷
- Letters (*Epistulae*)
 - Letter 47, to Publicola¹⁵⁸

¹⁵¹ For example, the sack of Rome in 410 was the impetus for *De Civitate Dei*; Boniface's inquiries regarding his duties concerning the Donatists for *Epistulae ad Boniface*, 189; and Volusianus' question regarding returning good for evil for *Epistulae ad Marcellin*, 138.

¹⁵² Ambrose, *De Officiis* [On Duties], 1.16.59. Available from http://www.ccel.org/fathers2/NPNF2-10/Npnf2-10-08.htm#P651_107216. Internet; accessed 1 July 2002.

¹⁵³ Cicero, *De Officiis*

¹⁵⁴ Mark T. Clark, "The Paradox of War and Pacifism," *Perspectives on Science and Christian Faith*, 47, Dec. 1995, 220-232.

¹⁵⁵ Augustine, *De libero Arbitrio* [The Free Choice of the Will]. Available from <http://www.newadvent.org/fathers/1510.htm>. Internet; accessed 1 July 2002.

¹⁵⁶ Oliver O'Donovan, *From Irenaeus to Grotius: A Sourcebook in Christian Political Thought 100-1625*, (Eerdmans, 1999), 117-119. See also Augustine, *Contra Faustum, Manichaeum* [Reply to Faustus, the Manichaeon]. Available from <http://www.newadvent.org/fathers/140622.htm>. Internet; accessed 1 July 2002.

¹⁵⁷ Augustine, *Quaestiones in Heptateuchum* [Questions Concerning the Heptateuch], 6.10. Available from http://www.augustinus.it/latino/questioni_ettateuco/quest_ettateuco_6.htm. Internet; accessed on 1 July 2002.

- Letter 138, to Marcellinus¹⁵⁹
- Letter 189, to Boniface¹⁶⁰
- Letter 222, to Darius¹⁶¹
- Sermon (*Sermones*) 30¹⁶²
- The City of God (*De Civitate Dei*)¹⁶³ books 1, 4, 5, and 19.

Augustine's framework for just war centers around four principles: just cause, right intention, legitimate authority, and formal declaration. These four requirements for a just war focus entirely upon *jus ad bellum*, for they stipulate the rationale of recourse to war. Augustine justifies war based on the love we owe our neighbors; it is a form of service secondary to prayer; and it is necessitated by the persistence of discord and deceit until the end of time. He also sees love and the desire for peace with the distinction of restraint and mercy as the sign of the Christian war-maker.¹⁶⁴

I shall analyze the above texts in terms of these four principles. Augustine did not specifically or systematically set forth a doctrine of just war as he did with other topics—the Trinity, original sin, predestination, and free will.¹⁶⁵ He obviously did not think that this subject deserved the focus of his efforts as other subjects did. Therefore, in order to discern Augustine's attitude toward war and a Christian's participation in war, I will draw

¹⁵⁸ Augustine, *Epistulae ad Publicola* [Letter to Publicola]. Available from <http://www.newadvent.org/fathers/1102047.htm>. Internet; accessed 1 July 2002.

¹⁵⁹ Augustine, *Epistulae 138 ad Marcellinus* [Letter to Marcellinus]. Available from <http://www.newadvent.org/fathers/1102138.htm>. Internet; accessed 1 July 2002.

¹⁶⁰ Oliver O'Donovan, *From Irenaeus to Grotius*, 133-136. See Augustine, *Epistulae 138 ad Boniface* [Letter to Boniface]. Available from <http://www.newadvent.org/fathers/1102189.htm>. Internet; accessed 1 July 2002.

¹⁶¹ Augustine, *Epistulae 122 ad Darius* [Letter to Darius]. Available from <http://www.newadvent.org/fathers/1102222.htm>. Internet; accessed 1 July 2002.

¹⁶² Augustine, *Sermones 30* [Sermons]. Available from <http://www.newadvent.org/fathers/160330.htm>. Internet; accessed 1 July 2002.

¹⁶³ Augustine, *De Civitate Dei* [The City of God]. Available from <http://www.newadvent.org/fathers/1201.htm>. Internet; accessed on 1 July 2002.

¹⁶⁴ Oliver O'Donovan, *From Irenaeus to Grotius*, 109.

¹⁶⁵ For example, *De Trinitate*, *De Natura et Gratia*, *De Gratia Christi et de Peccato Originaii*, and *De Gratia et Libero Arbitrio*.

from the various disparate works listed above where he peripherally addresses the issue of just war.

Just Cause

To Augustine, just cause specifies when we are permitted to resort to war. War is justifiable as a defense against external dangers—risks to innocent life, threats to a nation, and avenging of wrongdoings. However, unlike Cicero, Augustine held that war is not justified as an exercise of revenge. Just war must be waged strictly for the restoration of peace and must be the last resort. Furthermore, Augustine believed a just cause would require the retribution of an aggressor who has violated justice.

In *The City of God*, Augustine does not address the justification of war, being more concerned with why war actually occurs. He notes that peace is the ultimate aim of war,¹⁶⁶ that adversaries are sinning when a just war is waged,¹⁶⁷ and if men would refrain from all unjust wars, humanity would be delivered from war completely.¹⁶⁸ He provides the goal of war: “We do not seek peace in order to be at war, but we go to war that we may have peace. Be peaceful, therefore, in warring, so that you may vanquish those whom you war against, and bring them to the prosperity of peace.”¹⁶⁹ The justice for these wars is found in the injustice of an aggressor.¹⁷⁰

Augustine goes so far as to justify offensive war. “A just war is wont to be described as one that avenges wrongs, when a nation or state has to be punished, for refusing to make amends for the wrongs inflicted by its subjects, or to restore what it has seized un-

¹⁶⁶ Augustine, *De Civitate Dei*, 19.12.

¹⁶⁷ Augustine, *De Civitate Dei*, Book 19.12. cf. Book 19.15.

¹⁶⁸ Augustine, *De Civitate Dei*, Book 19, chap. 19.

¹⁶⁹ Augustine, *Epistulae ad Boniface*, 189.

¹⁷⁰ Augustine, *De Civitate Dei*, Book 19, 7.

justly.”¹⁷¹ Augustine was asked by Volusianus, *proconsul Africas*, about the effect that his teaching regarding returning good for evil had on the defense of the state.¹⁷² He says in a letter on the son of the centurion,

If the Christian Religion forbade war altogether, those who sought salutary advice in the Gospel would rather have been counseled to cast aside their arms, and to give up soldiering altogether. On the contrary, they were told: ‘Do violence to no man . . . and be content with your pay.’ If he commanded them to be content with their pay, he did not forbid soldiering. . . . Those whom we have to punish with a kindly severity, it is necessary to handle in many ways against their will. For when we are stripping a man of the lawlessness of sin, it is good for him to be vanquished, since nothing is more hopeless than the happiness of sinners, whence arises a guilty impunity, and an evil will, like an internal enemy.¹⁷³

The purpose of war is peace, with battles as a bridge to glory and peace.¹⁷⁴ Augustine tolerates violence in order to obtain the calm that comes from order.¹⁷⁵ “For Augustine, order is essential for peace, and order comes at the tip of a Roman soldier’s sword. Augustine is willing to have that price paid so that peace may exist.”¹⁷⁶ Crucial to Augustine’s understanding of war is the stipulation that a just cause would require the restoration of peace and order. By peace and order, Augustine meant tranquility and concord—the peace of the Heavenly City—not just the absence of aggression.

Right Intention

Witnessing the plundering and slaughtering of the sack of Rome in 410 A.D., Augustine understood the need for the right intention and actions in war. Possidius,

¹⁷¹ Augustine, *Quaestiones in Heptateuchem*, 6, 10. According to Fredrick Russell (*The Just War in the Middle Ages*, (Cambridge, MA: Cambridge University Press, 1975),26), the idea that wars may avenge injuries (*justa autem bella definiri solent, quae ulciscuntur injurais*) was the single most important statement of just war in the middle ages and figured prominently in Aquinas’ defense of just war in his *Summa*, II-II, Question 40, 1.

¹⁷² Though the letter is written to Marcellinus, the question itself is from Volusianus.

¹⁷³ Augustine, *Epistula ad Marcellin*, 138.

¹⁷⁴ Augustine, *De Civitate Dei*, Book 19, 12.

¹⁷⁵ Augustine, *De Civitate Dei*, Book 19, 13.

¹⁷⁶ David A. Lenihan, “The Just War Theory in the Work of Saint Augustine,” *Augustinian Studies*, (vol 19, 1988), 52.

bishop of Calama, a lifelong follower of Augustine and his official biographer, wrote of the Vandal invasion in 430.

In their rage, they displayed an utterly atrocious cruelty and laid waste to everything with looting, slaughter, and all kinds of tortures, fire, and countless other unspeakable enormities. They had no pity on either sex or age, or even on the priests and ministers of God, or on the ornaments or furnishings or buildings of the Churches.¹⁷⁷

Augustine explicitly covers the issue of right intention in his writings. For Augustine, right intention prohibits cruelty and the use of force to take control over a foe.

Augustine does not glorify or encourage war. As he says, “it is a higher glory still to stay war itself with a word than to slay men with the sword, and to procure or maintain peace by peace, not by war.”¹⁷⁸ However, he does recognize that at times war will be necessary and seeks to distinguish when it is justified from when it is not. Augustine poses the question of whether an enemy may be killed in battle or only in self-defense. His answer is that the soldier is an agent of the law and has a legal right to kill in a just battle.¹⁷⁹ Augustine reaffirms that the gospel does not require leaving military service, saying that it is *malitia* (malice) that is the problem and not *militia* (military service).¹⁸⁰ Augustine has no problem with Christians engaging in the military profession, quoting Christ’s words to the Centurion, Christ’s words to Cornelius, and John the Baptist’s words to the soldier.¹⁸¹

War is justified to protect the peace and safety of the community, to punish love of violence, revengeful cruelty, and lust for power, etc.

¹⁷⁷ Possidius, *Vita Augustini* 28.5—*The Life of Saint Augustine by Possidius, Bishop of Calama*, intro and notes by Cardinal Michele Pellegrino, trans. Audrey Fellowes and Matthew O’Connell, ed. John E. Rotelle, O.S.A., (Villanova, PA: Augustinian Press, 1988).

¹⁷⁸ Augustine, *Epistulae* 229

¹⁷⁹ Augustine, *De libero Arbitrio*, 1.5

¹⁸⁰ Augustine, *Sermon* 302.

¹⁸¹ Augustine, *Epistulae* 189.

When force is required to inflict the punishment...in obedience to God or some lawful authority, good men undertake wars, when they find themselves in such a position as regards the conduct of human affairs, that right conduct requires them to act, or to make others act, in this way...When war is undertaken in obedience to God, who would rebuke, or humble, or crush the pride of man, it must be allowed to be a righteous war.¹⁸²

It is important that the war be fought with correct motives. Augustine says, “The passion for inflicting harm, the cruel thirst for vengeance, an unpacific and relentless spirit, the fever of revolt, the lust of power, and such like things, all these are rightly condemned in war.”¹⁸³ He also says, “The passion for inflicting harm, the cruel thirst for vengeance, an unpacific and relentless spirit, the fever of revolt, the lust of power, and such like things, all these are rightly condemned in war.”¹⁸⁴

Legitimate Authority

A just war is only permissible if a nation has legitimate civil authority to wage war. Augustine’s criteria precluded resort to war by private individuals, allowing only those who are responsible for the public order to declare war. In *Contra Faustum*, Augustine answers the objections that a Manichean pacifist brings against the “wars of Moses.” Augustine stipulates what kind of war is justified. Not just anybody may declare war; the right authority must make that declaration.

The natural order conducive to peace among mortals demands that the power to declare and counsel war should be in the hands of those who hold the supreme authority.¹⁸⁵

Augustine says “To take the sword is to arm oneself in order to take the life of anyone, without the command or permission of superior or lawful authority.”¹⁸⁶ The leader Augustine had in mind was one whom God had entrusted with the responsibility of gov-

¹⁸² Augustine, *Contra Faustum*, 22.75

¹⁸³ Augustine, *Contra Faustum*, 22.74

¹⁸⁴ Ibid.

¹⁸⁵ Augustine, *Contra Faustum* 22.75, emphasis mine.

¹⁸⁶ Augustine, *Contra Faustum*, 22.70

ernance. In his time, this was the emperor. Later, it would be kings and princes. Today, it is our elected leadership. No private citizen is answerable to God for the welfare of their states in a way that these leaders are answerable to God.

Formal Declaration

Augustine notes that the Sabines did not make a “proclamation of war” against the Romans after the Sabine daughters were abducted. He points out that they should have before engaging the Romans.¹⁸⁷ This is the historical basis for understanding the requirement of formal declaration. Since the use of military force is the prerogative of governments, not of private individuals, a state of war must be officially declared by the highest authorities.

Miscellaneous

Concerning ambushes, Augustine says, “Provided the war be just, it is no concern of justice whether it be carried on openly or by ambushes.”¹⁸⁸ He cites Joshua 8:2 where God commanded Joshua to lay ambushes for the city of Ai. God ordained war in Joshua’s era, but under the law of Christ there is an attitudinal change—the law of Christ can be obeyed in the practice of war if the right attitude is sustained.¹⁸⁹

Conclusions about Augustine

We see in Augustine of Hippo the foundations of the just war theory. He is the main authority for later Christian thinking about just war, and a long tradition sees him as the father of the just war theory, being the first Christian theologian to address this issue. Augustine’s comments on war support a philosophy of history that demands moral re-

¹⁸⁷ Augustine, *De Civitate Dei*, 2.17.

¹⁸⁸ Augustine, *Quaestiones in Heptateuchem*, 6.10

¹⁸⁹ O’Donovan, *From Irenaeus to Grotius*, 106.

sponsibility for the Christian. Augustine offered his own definitions to terms found in classical just war understanding, translating Cicero's terms into Christian terms and converting the Ciceronian just war theory into a Christian just war theory.¹⁹⁰

Gratian (fl. 1140-ca. 1170)

About 1140, Gratian compiled his enormous canon-law work, *Concordia Discordantium Canonum* or, as it came to be called, the *Decretum*—a compilation of quotations from the church fathers and previous canon law writings. The commentators on the *Decretum* became known as “decretists” who were subsequently succeeded by “decretalists” who commented on the new canon laws being developed in the twelfth century.¹⁹¹ Within this work, Gratian devoted one large section to the topic of war. This *causa* was divided into eight chapters, of which chapters one, two, three, four, and eight are of interest to us:

- Is it a sin to wage war?
- What is a just war? How did Israel wage just wars?
- Should we take up arms on behalf of attacks on our allies?
- Are we to inflict punishment upon the aggressors?
- Is it lawful for bishops to take up arms—either by their own authority, by direction of the pope, or by order of the emperor?

Gratian's most frequently cited authority was Augustine, whom he quoted no less than 64 times. His *causa* of the *Decretum* was soon recognized as a major resource of Augustinian citations on war.¹⁹² Frederick Russell cites 22 works by 12th and 13th century

¹⁹⁰ Burggraff, David Lawrence, *The Formation Of Augustine's Just War Principles*, (Dallas, TX: DTS dissertation, 2000), 15.

¹⁹¹ Russell follows this distinction, calling those who wrote before 1190 decretists since they did not have the new decretals that appeared after that date. See F.H. Russell, *The Just War in the Middle Ages*, 86.

¹⁹² LeRoy Brandt Walters, Jr., *Five Classic Just-War Theories: A Study in the thought of Thomas Aquinas, Vitoria, Suárez, Gentili, and Grotius*, (Yale University, Ph.D. dissertation, 1971), 46-47. Walters' dissertation is a tremendous reference on just war thought in the Middle Ages. I am indebted to him for his categorization and classification of Aquinas' thought. In chapter three of his dissertation, he discusses each of

canon lawyers who discuss the problem of war and who cite Gratian's *Decretum* as their source.¹⁹³ These canon lawyers wrestled with the proper cause for just war, the authority for going to war, and the role of the Church and clergy in a just war. However, they also dealt with other questions: defining standards for the conduct of just war, determining the legal consequences of a just war, and setting forth a doctrine of crusade.¹⁹⁴ So we see that by the time of Aquinas (*cir.* 1266), these canon lawyers had been heartily discussing the issue of just war for over 125 years.

Rufinus the Canonist (ca. 1150-1191)

Rufinus was an Italian canonist who produced the *Summa Decretorum*—the first commentary on Gratian's *Decretum*. Rufinus writes,

A war is considered just in respect of who declares it, who fights it, and against whom hostilities are directed. (a) In respect of who declares it: anyone who actually initiates hostilities or permits them must have the proper authority to do so. (b) In respect of who fights it: anyone who wages war should do so with good intention, and hold a social position in which fighting is no disgrace. (c) In respect of who is to be subdued by the hostilities: he should deserve to have war waged against him or, if he does not actually deserve it, he should be believed on reasonable grounds to have deserved it. Where any of these three proves to have been lacking, the war cannot, strictly speaking, be just.¹⁹⁵

Rufinus sets forth the same core requirements that Aquinas will later articulate: proper authority, proper motives, and just cause.

Thomas Aquinas (1225-1274)

Aquinas, the great systematician of the medieval Roman church, references Ambrose, Augustine, Gratian's *Decretum*, the *Decretals of Gregory IX*, and Scripture in his explicit

these four areas; and I closely follow his argument there. N.B.: there are two aspects of Thomas' argument that I will not discuss, specifically clerics taking up the sword and fighting on holy days.

¹⁹³ Frederick M. Russell, *The Medieval Theories of the Just War*, chapters 4-5.

¹⁹⁴ *Ibid.*

¹⁹⁵ Rufinus the Canonist, as quoted in O'Donovan *From Irenaeus to Grotius*, 305.

discussion of just war. Aquinas held that three requirements are necessary to justify morally the resort to force: legitimate authority, just cause, and right intention.

- By legitimate authority, he insisted that force was to be employed as a public act by a sovereign political authority, meaning that there was no superior political authority to which aggrieved citizens could appeal. This meant that the resort to war was part of political authority. The political decisions on whether to resort to war (*jus ad bellum*) and the art of war itself (*jus in bello*) were a part of the art of statecraft.
- Just cause included one or more of three possibilities: defense against wrongful attack, retaking something wrongly taken, or punishment of evil.
- Right intention negatively meant that war should not be undertaken with a lust for battle, personal glory, bloodlust, etc. Positively, right intention insists that the aim is to bring about peace, not a utopian peace, but a tranquility of order.¹⁹⁶

Aquinas addresses the following logical areas surrounding the just war question:

- Whether Fighting In War Is Always A Sin
- Whether Any War Is Lawful
- The Authority to Wage War
- When a Just Cause Is Required
- The Right Intention of Those Fighting
- The Right Means
- Laying Ambush¹⁹⁷

Whether Fighting In War Is Always a Sin

Aquinas first deals with four difficult Scriptural texts. First, in commenting on Christ's statement in Matt. 26:52 "for all those who take up the sword shall perish by the sword," he follows Augustine in making the biblical distinction between personal and corporate ethics. Aquinas notes that to take up the sword thusly was to do so without civil authorization.¹⁹⁸

¹⁹⁶ Keith Pavlischek, *Just War Principles and Counterterrorism*, Faith and Reason Institute for the Study of Religion and Culture, (Washington, D.C., Sept. 2001). Available from [http://www.cpjustice.org/stories/storyReader\\$595](http://www.cpjustice.org/stories/storyReader$595). Internet; accessed 1 July 2002.

¹⁹⁷ LeRoy Brandt Walters, Jr., *Five Classic Just-War Theories*, 59.

¹⁹⁸ Aquinas, *Summa* 2.40.1, point 2.

Second, Aquinas deals with two other problematic texts together. “But I say to you, do not resist him who is evil; but whoever slaps you on your right cheek, turn to him the other also” and “never take your own revenge, beloved, but leave room for the wrath of God, for it is written, ‘Vengeance is Mine, I will repay,’ says the Lord.”¹⁹⁹ Aquinas again makes the biblical distinction between personal and corporate ethics and limits these requirements to interpersonal conflicts and self-defense.²⁰⁰

Finally, he addresses Christ’s words to Peter, “Put your sword back into its place; for all those who take up the sword shall perish by the sword.”²⁰¹ In doing so, Aquinas limits this command to “bishops and clerics” only, making it unlawful for them to fight.²⁰²

Such like precepts, as Augustine observes (*De Serm. Dom. in Monte i, 19*), should always be borne in readiness of mind, so that we be ready to obey them, and, if necessary, to refrain from resistance or self-defense. Nevertheless it is necessary sometimes for a man to act otherwise for the common good, or for the good of those with whom he is fighting. Hence, Augustine says (*Ep. ad Marcellin. cxxxviii*): ‘Those whom we have to punish with a kindly severity, it is necessary to handle in many ways against their will. For when we are stripping a man of the lawlessness of sin, it is good for him to be vanquished, since nothing is more hopeless than the happiness of sinners, whence arises a guilty impunity, and an evil will, like an internal enemy.’²⁰³

Whether Any War Is Lawful

Aquinas addresses the moral objection to war. Again, following Augustine’s lead, Aquinas addresses what John the Baptist did and did not say to the soldiers in Luke 3:14. “And some soldiers were questioning him, saying, ‘And what about us, what shall we do?’ And he said to them, ‘Do not take money from anyone by force, or accuse anyone falsely, and be content with your wages.’” Aquinas notes that John commanded the soldiers to be content with their pay; he did not forbid them from being a combatant.

¹⁹⁹ Matthew 5:39 and Romans 12:19, respectfully.

²⁰⁰ Aquinas, *Summa* 2.40.1, point 2.

²⁰¹ Matthew 26:52.

²⁰² Aquinas, *Summa* 2.40.1, point 2.

²⁰³ Aquinas, *Summa* 2.40.1, contra 2, emphasis mine.

Next, he addresses the question of war being contrary to sin. He makes the distinction between the intended true peace at the end of a just war and an evil peace at the end of a non-just war. Again citing Augustine, Aquinas sees the goal of a just war as bringing the prosperity of peace.²⁰⁴

As Augustine says (*Contra Faust. xxii, 70*): ‘To take the sword is to arm oneself in order to take the life of anyone, without the command or permission of superior or lawful authority.’ On the other hand, to have recourse to the sword (as a private person) by the authority of the sovereign or judge, or (as a public person) through zeal for justice, and by the authority, so to speak, of God, is not to ‘take the sword,’ but to use it as commissioned by another, wherefore it does not deserve punishment. And yet even those who make sinful use of the sword are not always slain with the sword, yet they always perish with their own sword, because, unless they repent, they are punished eternally for their sinful use of the sword.²⁰⁵

Those who wage war justly aim at peace, and so they are not opposed to peace, except to the evil peace, which Our Lord ‘came not to send upon earth’ (Mt. 10:34). Hence Augustine says (*Ep. ad Bonif. clxxxix*): ‘We do not seek peace in order to be at war, but we go to war that we may have peace. Be peaceful, therefore, in warring, so that you may vanquish those whom you war against, and bring them to the prosperity of peace.’²⁰⁶

The Authority to Wage War

Augustine had agreed on the requirement of proper authority to wage a just war;²⁰⁷ but according to Fredrick Russell, the canon lawyers devoted more attention to the question of authority than to any other question concerning war. From Gratian on, they treated the war waged by the prince and the war waged by the church as parallel forms of permissible warfare.²⁰⁸

In his *Summa*, Aquinas discusses whether religious orders can be directed to “soldiering.” He sets forth the objection as

“no religious order may be established for an unjust object. But as Isidore says (*Etym. xviii, 1*), ‘A just war is one that is waged by order of the emperor.’ Since then religious

²⁰⁴ Aquinas, *Summa* 2.40.1, contra point 3. Aquinas refers to Augustine’s *Epistulae ad Boniface*, 189.

²⁰⁵ Aquinas, *Summa*, 2.40.1, contra 1.

²⁰⁶ Aquinas, *Summa*, 2.40.1, contra 3.

²⁰⁷ Augustine, *Contra Faustum*, 22, 74-75.

²⁰⁸ Frederick H. Russell, *Medieval Theories*, Chapter 4-5.

are private individuals, it would seem unlawful for them to wage war; and consequently no religious order may be established for this purpose.”²⁰⁹

Then he answers his own objection, “The establishment of a religious order for the purpose of soldiering does not imply that the religious can wage war on their own authority; but they can do so only on the authority of the sovereign or of the Church.”²¹⁰

Aquinas speaks of the *auctoritas principis*—the “authority of the sovereign or judge.” By the sovereign’s own authority, he commissions people to use the sword for justice.²¹¹ However, correct jurisdictional authority is also in Aquinas’ mind. He says, “no one justly punishes another unless the latter is subject to his jurisdiction.”²¹²

In order for a war to be just, three things are necessary. First, the authority of the sovereign by whose command the war is to be waged. For it is not the business of a private individual to declare war, because he can seek for redress of his rights from the tribunal of his superior. Moreover it is not the business of a private individual to summon together the people, which has to be done in wartime. And as the care of the common weal is committed to those who are in authority, it is their business to watch over the common weal of the city, kingdom or province subject to them. And just as it is lawful for them to have recourse to the sword in defending that common weal against internal disturbances, when they punish evil-doers, according to the words of the Apostle (Rm. 13:4): ‘He beareth not the sword in vain: for he is God’s minister, an avenger to execute wrath upon him that doth evil’; so too, it is their business to have recourse to the sword of war in defending the common weal against external enemies. Hence it is said to those who are in authority (Ps. 81:4): ‘Rescue the poor: and deliver the needy out of the hand of the sinner’; and for this reason Augustine says (*Contra Faust. xxii, 75*): ‘The natural order conducive to peace among mortals demands that the power to declare and counsel war should be in the hands of those who hold the supreme authority.’²¹³

It should be noted that Aquinas did not limit the authority to wage war to the civil ruler alone. As Walters notes, Aquinas also said that the ecclesiastical authority had authority in military matters as well. This took three forms:

- Granting of crusade-indulgences
- Urging secular princes to wage war, and

²⁰⁹ Aquinas, *Summa*, 2.188.3, 4.

²¹⁰ Aquinas, *Summa*, 2.188.3, contra 4.

²¹¹ Aquinas, *Summa*, 2.40.1, contra 1.

²¹² Aquinas, *Summa*, 2.65.2. cf. 2.67.1.

²¹³ Aquinas, *Summa*, 2.40.1.

- Furnishing chaplains for armies in the field.²¹⁴

When a Just Cause Is Required

Aquinas says that a deliberate offense by the opponent is required to defend launching a just war.²¹⁵

Secondly, a just cause is required, namely that those who are attacked, should be attacked because they deserve it on account of some fault [*culpa*]. Wherefore Augustine says (*Questions. in Hept., qu. x, super Jos.*): ‘A just war is wont to be described as one that avenges wrongs, when a nation or state has to be punished, for refusing to make amends for the wrongs inflicted by its subjects, or to restore what it has seized unjustly.’²¹⁶

Walters argues, and I think convincingly, that Aquinas chose to use the precise word *culpa* in his just cause formula to indicate that the enemy’s offense had to be voluntary or willful rather than involuntary or accidental—focusing on the enemy’s subjective guilt rather than on the objective violation of law or custom.²¹⁷

The Right Intention of Those Fighting

Aquinas argues that those who participate in a just war may sin by intentionally using sinful means. Aquinas was greatly concerned with the individual’s motive, purpose, and intention in fighting a war.

Thirdly, it is necessary that the belligerents should have a rightful intention, so that they intend the advancement of good, or the avoidance of evil. Hence Augustine says (*De Verb. Dom.*): ‘True religion looks upon as peaceful those wars that are waged not for motives of aggrandizement, or cruelty, but with the object of securing peace, of punishing evil-doers, and of uplifting the good.’ For it may happen that the war is declared by the legitimate authority, and for a just cause, and yet be rendered unlawful through a wicked intention. Hence Augustine says (*Contra Faust. xxii, 74*): ‘The passion for inflicting harm, the cruel thirst for vengeance, an unpacific and relentless spirit, the fever of revolt, the lust of power, and such like things, all these are rightly condemned in war.’²¹⁸

²¹⁴ Walters, *Five Classic Just War Theories*, 85-87. I do not intend on discussing this form of medieval ecclesiastical authority in this paper.

²¹⁵ Aquinas also discusses the suitable cause of a religious war as well. I will also not address Thomas’ view of religious war.

²¹⁶ Aquinas, *Summa*, 2.40.1, emphasis mine. “On account of some fault” is *propter aliquam culpam*.

²¹⁷ Walters, *Five Classic Just-War Theories*, 112.

²¹⁸ Aquinas, *Summa*, 2.40.1. Emphasis mine.

Later in the *Summa* during his discussion on justice, Aquinas made a strong distinction between justice exercised materially (*materialiter*) and formally (*formaliter*) and ended with a discussion of invincible ignorance—that someone could not know what in fact he did not know.²¹⁹ His thoughts on justice apply equally to his understanding of right motives in a just war.

In his *Summa*, dealing with the question of whether robbery may be committed without sin, Aquinas states the objection:

It would seem that robbery may be committed without sin. For spoils are taken by violence, and this seems to belong to the essence of robbery, according to what has been said (4). Now it is lawful to take spoils from the enemy; for Ambrose says (*De Patriarch. 4*): ‘When the conqueror has taken possession of the spoils, military discipline demands that all should be reserved for the sovereign,’ in order, to wit, that he may distribute them. Therefore in certain cases robbery is lawful.²²⁰

In answering this question, he first deals with the general issue of theft, then extends it to thievery in war. Regarding theft he answers,

Robbery implies a certain violence and coercion employed in taking unjustly from a man that which is his. Now in human society no man can exercise coercion except through public authority: and, consequently, if a private individual not having public authority takes another’s property by violence, he acts unlawfully and commits a robbery, as burglars do. As regards princes, the public power is entrusted to them that they may be the guardians of justice: hence it is unlawful for them to use violence or coercion, save within the bounds of justice—either by fighting against the enemy, or against the citizens, by punishing evil-doers: and whatever is taken by violence of this kind is not the spoils of robbery, since it is not contrary to justice. On the other hand to take other people’s property violently and against justice, in the exercise of public authority, is to act unlawfully and to be guilty of robbery; and whoever does so is bound to restitution.²²¹

And extending the argument concerning robbery to pillaging in warfare, he states:

A distinction must be made in the matter of spoils. For if they who take spoils from the enemy, are waging a just war, such things as they seize in the war become their own property. This is no robbery, so that they are not bound to restitution. Nevertheless even

²¹⁹ Aquinas, *Summa*, 2.72.2. In military doctrine, invincible ignorance holds that soldiers of either side are not guilty of the *crime* of war, but can only be held morally and legally accountable for their *actions* in war. See Michael Walzer, *Just and Unjust Wars*, chapters 3 and 8 for a detailed discussion.

²²⁰ Aquinas, *Summa*, 2.66.1.

²²¹ Aquinas, *Summa*, 2.66.1, answer.

they who are engaged in a just war may sin in taking spoils through cupidity arising from an evil intention, if, to wit, they fight chiefly not for justice but for spoil. For Augustine says (*De Verb. Dom. xix; Serm. lxxxii*) that ‘it is a sin to fight for booty.’ If, however, those who take the spoil, are waging an unjust war, they are guilty of robbery, and are bound to restitution.²²²

Aquinas would have agreed that someone could have pursued an unjust cause but with the right intention. However, Aquinas never says that a just war becomes unjust because of the sinful intent of a combatant; rather, the combatant’s actions were unlawful because of his wrong motives. Therefore, it is possible for a war to be objectively just while participants are subjectively unjust in their participation.

The Right Means

Aquinas set forth two primary prescriptions in his discussion of proper means. First, he forbade lying to the enemy or breaking one’s promise to the enemy.

Now a man may be deceived by another’s word or deed in two ways. First, through being told something false, or through the breaking of a promise, and this is always unlawful. No one ought to deceive the enemy in this way, for there are certain ‘rights of war and covenants, which ought to be observed even among enemies,’ as Ambrose states (*De Officiis i*).²²³

While admitting that a man must not tell the enemy everything, Aquinas prohibited lying and promise breaking in a just war. It is interesting that Aquinas did not interact with nor consider two foundational scriptural passages that disagree with his position: Exodus 1:19-21 (God’s blessing the Hebrew midwives in their lie to Pharaoh) and Joshua 2: 4-5 (Rahab’s lying to save the lives of the Hebrew spies). In both cases, we have the use of a lie in corporate versus interpersonal ethics—specifically in a wartime environment. In the case of the midwives, the Hebrews were enslaved by the Egyptians; and in the case of Rahab, the Hebrews were spying out the land in preparation for war. In both

²²² Aquinas, *Summa*, 2.66, contra 1.

²²³ Aquinas, *Summa*, 2.40.3.

cases, the use of lying is approved by God. This should be seen as a prescription to us for the use of lying and subterfuge in a just war.²²⁴

Aquinas' second prohibition concerned killing innocent persons. In his exposition of Exodus 23:7, he emphasizes the ban on killing the innocent and that the guilty could be executed only when visibly separable from the innocent.²²⁵ Even though Aquinas does not directly link the prohibition on killing with just war, it is reasonable to make that extension to his arguments.

Laying Ambush

Aquinas says that concealing the truth is not lying but an act of discretion, so the use of ambushes and subterfuge is morally permissible.

Secondly, a man may be deceived by what we say or do, because we do not declare our purpose or meaning to him. Now we are not always bound to do this, since even in the Sacred Doctrine many things have to be concealed, especially from unbelievers, lest they deride it, according to Mt. 7:6: 'Give not that which is holy, to dogs.' Wherefore much more ought the plan of campaign to be hidden from the enemy. For this reason among other things that a soldier has to learn is the art of concealing his purpose lest it come to the enemy's knowledge, as stated in the Book on Strategy by Frontinus. Such like concealment is what is meant by an ambush which may be lawfully employed in a just war. Nor can these ambushes be properly called deceptions, nor are they contrary to justice or to a well-ordered will. For a man would have an inordinate will if he were unwilling that others should hide anything from him.²²⁶

Aquinas' point is that if a war is just, the use of ambushes and subterfuge is morally permissible. In a just war, the use of ambushes is morally permissible because it was an act of discretion and not lying. Aquinas' point here is important because we will be considering the use of ambushes, trickery, deception, schemes, and subterfuge in dealing with antiterrorism measures later in this thesis.

²²⁴ Lies to prevent murder do not justify lying in general. These are very special cases, and it was God's provision for His people; but these accounts do set before us a prescription for subterfuge in a just war context.

²²⁵ Aquinas, *Summa*, 2.64.6.

²²⁶ Aquinas, *Summa*, 2.40.3.

Conclusions about Aquinas

The most biblical and systematic exposition of just war theory is given by Thomas Aquinas. In his *Summa Theologiae*, Aquinas presents the general outline of what has come to be known as the just war theory. He discusses not only the justification for war but also activities that are permissible in war. Aquinas shaped political, philosophical, and religious theories around Aristotelian ethics and reason. His discourse on just war theory in *Summa Theologiae* provided a benchmark of the Middle Ages.

When Thomas Aquinas discusses just war in the *Summa Theologiae* (II–II.40), he does not do so in the section on justice but rather in the section on charity—specifically, the love of God. He makes it clear that war is not a vice that is opposed to the love of God. On the contrary, war making, when just, can be a form of love. Of course, war is always contrary to peace, but this is sometimes desirable since peace is not always a just order that deserves to be preserved.²²⁷

Going further than Gratian, Aquinas developed and strengthened some of the various subdivisions of *jus ad bellum*, most notably issues such as legitimate authority, just cause, and right and moral intention. He said that authorities must not wage wars for their own thirst of power or political hegemony over different cultures but only to avenge an evil done unto them.

Like Augustine, Aquinas believed that a right and moral intention of the people going to war is defined only as a means to achieve peace in the long term or to achieve some good. In *De Verbis Domini*, he even cited St. Augustine's reference to this issue. Thus,

²²⁷ Darrell Cole, "Good Wars," *First Things*, 116, October 2001, 27-31. Available from <http://www.firstthings.com/ftissues/ft0110/articles/cole.html>. Internet; accessed on 1 July 2002.

the pursuit of lasting peace must always be the primary and ultimate objective of a just warrior.²²⁸

Aquinas's thoughts became the pattern for later Scholastics and canon lawyers to expand. The most important of these were Francisco de Vitoria (1548-1617), Francisco Suárez (1548-1617), Hugo Grotius (1583-1645), Samuel Pufendorf (1632-1704), philosopher Christian Wolff (1679-1754), and Emerich de Vattel (1714-1767).

John Wyclif (ca. 1330-1384)

In his *Civil Lordship*, Wyclif develops a comprehensive theory of civil and ecclesiastical polity and briefly addresses the subject of *jus in bello*. In it, he discusses three false principles that were alleged by certain teachers of law:

1. That one may do what one will with one's own property.
2. The best title is conquest.
3. That any method of hurting enemies is lawful.

The two arguments that were being used to support these three propositions were:

- The children of Israel occupied the Promised Land, drove out the nations, conferring that conquest was just.
- All four kingdoms of Daniel 2 acquired their right of lordship through conquest, validating their lordship and thus the conquest.²²⁹

Wyclif's response is that these principles are a nest of heresy for soldiers, teaching greedy and predatory attacks against weaker brothers. He addresses both of these in order.

1. It all too easily happens that conquerors let the garment of charity slip; and if they have no charity, then what they are doing is simply seizing others' goods. So it comes about that conquerors seize others' goods without right, and so for all their conquering, seizing, and spoiling, they acquire absolutely no title in right to their spoil. The premise is demonstrated above in chapter 15, on the sixteen conditions of charity. For charity does

²²⁸ Raleigh Finlayson, *Contrasting the Theoretical Just War Doctrine with the Strategic Air Campaign of the Persian Gulf Conflict*. Available from <http://www.is.rhodes.edu/Modus/99/2.html>. Internet; accessed 1 July 2002.

²²⁹ John Wyclif, *Civil Lordship*, as quoted in O'Donovan, *From Irenaeus to Grotius*, 505-506.

not seek to hold property, nor does it contemplate doing harm to a brother from ambition for temporal goods. But the opposite is usually the case with a conquer.

2. The fact that one occupies goods which were previously unowned does not give one an absolute right to occupy them. A fortiori the fact that one occupies goods to which somebody previously had a right does not give one an absolute right to occupy them. The premise is demonstrated in ch. 5: were it not so, God would have had no right to expel our first parents from Paradise. The conclusion is demonstrated as follows:—Occupying goods which nobody owns without provocation or outrage is less discrepant with justice than seizing a just man's goods. If it were not so, there would be nothing left in this regard to which abuse of gods or injury of the neighbor might refer—a contradictory conclusion.²³⁰

Wyclif acknowledges that conquest does not provide a title of possession. He sets forth three just war requirements: charity in the conqueror, authorization by the Creator, and unlicensed intrusion on the part of the previous possessor.

The first of these is demonstrated from the argument so far: without the title of charity nobody can be lord of anything. The second is demonstrated by the need for ratification, confirmation, and authorization by the Sovereign Lord for any creature to have anything, absolutely speaking. And the third is demonstrated by what was said in ch. 18 above about the transferal of a kingdom from a race on account of wrongs, injurious conduct, outrages, and various perfidy. For although an individual may sometimes be punished in the body as an example of patience, or to acquire merit, or to declare the glory of God, as in the case of Job and the man born blind; nevertheless, for the spoiling of a kingdom from a city to be justified, it must be presumed that the objects of the spoil had been misused. For if their right use had been maintained, the spoilers would have had no right to dispossess those whom they have despoiled.²³¹

Desiderius Erasmus (1466-1536)

Erasmus wrote three political writings: *Panegyric for Archduke Philip of Austria* (“*Panegyricus*”), *The Education of a Christian Prince* (“*Institutio principis christiani*”), and *Complaint of Peace* (“*Querimonia pacis*”, now known as “*Querela pacis*”). All three works commend the classical ideal of a Christian prince as a paragon of virtue and wisdom whose humanity and dedication to the common good are demonstrated by his cultivation of the arts of peace and “by his abhorrence of war as an unrivaled evil for his sub-

²³⁰ John Wyclif, *Civil Lordship*, as quoted in O'Donovan, *From Irenaeus to Grotius*, 506.

²³¹ *Ibid.*

jects' material and spiritual welfare."²³² The *Complaint of Peace* has earned Erasmus the reputation of being a pacifist.

How then is it right for them to contend amongst themselves in continual warfare? How can you call on a common father if you are drawing a sword to thrust in your brother's vitals? And as Christ wished this one concept to be deeply implanted in the minds of his followers, he drove home his concern for concord with so many signs, parables, and commandments... Every Christian word, whether you read the Old Testament or the New, reiterates one thing: peace with unanimity; while every Christian life is occupied with one thing: war. What is this more than brutal brutality, which in so many instances can be neither controlled nor tamed? Men so minded should surely either cease to pride themselves on the name of Christian or put into practice the teaching of Christ through concord.²³³

His desire for peace at nearly any cost included paying for it—not in a sense of being held hostage or paying a tribute to an overlord, but rather calculating the total cost of war.

The causes of war must be removed immediately. Some things must be overlooked; such courtesy will encourage courtesy. There are times when peace has to be paid for. If you calculate all a war would have cost and the number of citizens you will save from death, peace will seem cheap at the price, however much you paid for it; the cost of war would have been greater, quite apart from the blood lost by your subjects. You must work out how much evil you avoid and how much good you can preserve, and you will not regret the cost... Let all [bishops, priests, monks, theologians] combine against war, all be watch-dogs and speak out against it. In private and in public they much preach, proclaim, and inculcate one thing: peace.²³⁴

Erasmus credits the lack of stability in the monarchies—the continuous turning over of power by wedding of royal children for alliances—as the cause for war.

Some plan must be devised whereby the power to rule shall not change hands so frequently and be forever on the move, because every innovation in affairs creates disturbance, and disturbance creates war. It could easily be achieved if royal children had to marry within the bounds of their own territory, or if, when an alliance between neighbours was desirable, all parties should renounce their expectations of succession. Nor should a prince be permitted to sell or transfer any part of his realm, as if free cities were his personal property: for the cities subject to a king's rule are free, unlike those which are slaves under a tyrant's domination... There should be agreement between princes once and for all on what each of them should rule, and once territories have been assigned to them, no alliance should extend or diminish these and no treaty tear them apart.²³⁵

²³² O'Donovan, *From Irenaeus to Grotius*, 571.

²³³ Erasmus, *The Complaint of Peace*, as quoted in O'Donovan, *From Irenaeus to Grotius*, 575.

²³⁴ *Ibid.*, 579.

²³⁵ *Ibid.*, 578.

Erasmus realizes a condition of war is misery and suffering of the people. He sees this as what typically happens *in bello* because the agents of war are murderers and monsters.

You judge it a serious thing to introduce the criminal dregs of hired mercenaries into your country, to feed them on your people's misery, to submit to them, fawn on them, indeed, to entrust yourself and your safety to their will, you must realize that this is a condition of war. If you abominate robbery, this is what war teaches; if you abhor murder, this is the lesson of war. For who will shrink from killing one man in hot blood when he has been hired for a pittance to slaughter so many? If neglect of the law is the most imminent threat to civil authority, why, 'the law says nothing when arms hold sway' (Cicero, *Pro Milone* 4.11). If you believe that fornication, incest, and worse are loathsome evils, war is the school where these are taught. If irreverence for and neglect of religion is the source of every evil, religion is entirely swept away by the storm of war. If you judge the state of your country to be worst when the worst people in it have the most power, in time of war the lowest kinds of criminal are the rulers; war has most need of those whom in time of peace you would nail to the cross. For who will be better at leading troops through hidden tracks than a trained brigand? Who will be bolder at plundering houses and despoiling churches than a housebreaker or bomb-robber? Who will be so eager to strike down and disembowel a foe as a gladiator or murderer? Or so suitable for setting fire to cities and engines of war as an incendiary? Who will defy the waves and hazards at sea like a pirate trained by a lifetime of plundering? If you want to see clearly how immoral a thing is war, you have only got to look at the agents it employs.²³⁶

However, Erasmus is not a categorical pacifist because he concedes in various places that war may be an "unavoidable" last resort required by the obligations of governing and must be conducted within specifiable ethical guidelines.²³⁷

But if war is unavoidable, it should be conducted in such a way that the full force of its calamities must fall on the heads of those who gave cause for it. As things are now, princes wage war unscathed and their generals thrive on it, while the main flood of misfortune sweeps over the peasants and humble citizens, who have no interest in war and gave no occasion for it. Where is a prince's wisdom, if he takes no thought of this, or his heart, if he reckons it of small consequence?²³⁸

Martin Luther (1483-1546)

Luther wrote little concerning just war. His thoughts were not systematized on the issue, so we have to gather his intent from several places. First, in the example of David's using Solomon to avenge Joab's murders, Luther says that the prince must deal justly but prudently with evildoers.

²³⁶ *Ibid.*, 580.

²³⁷ O'Donovan, *From Irenaeus to Grotius*, 571.

²³⁸ Erasmus, *The Complaint of Peace*, as quoted in O'Donovan, *From Irenaeus to Grotius*, 578.

A prince must punish the wicked in such a way that he does not step on the dish while picking up the spoon, and for the sake of one man's head plunge country and people into want and fill the land with widows and orphans. Therefore, he must not follow the advice of those counselors and fire-eaters who would stir and incite him to start a war, saying: 'What, must we suffer such insult and injustice?' He is a mighty poor Christian who for the sake of a single castle would put the whole land in jeopardy.²³⁹

Luther takes his theology of the two kingdoms, the boundary between the province of the Christian person and that of the secular person—one person with a foot in each camp—and applies it to the civil sphere.

When a Christian goes to war or when he sits on a judge's bench, punishing his neighbor, or when he registers an official complaint, he is not doing this as a Christian, but as a soldier or judge or lawyer. At the same time he keeps a Christian heart. He does not intend to harm anyone, and it grieves him that his neighbor must suffer grief. So he lives simultaneously as a Christian toward everyone, personally suffering all sorts of things in the world, and as a secular person, maintaining, using, and performing all the functions required by the law of his territory or city, by civil law, and by domestic law.²⁴⁰

Luther saw different jurisdictions of authority among Christians arising from their temporal offices (*Ämter*) or stations (*Stände*) in life—spouse, parent, merchant, ruler, pastor, etc.

Francisco de Vitoria (ca 1483-1546)

The sixteenth-century Spanish theologian Francisco de Vitoria incorporated the theology of Thomas Aquinas into his teachings and initiated the intensive study of Aquinas, establishing his own thought as a theological basis for the Catholic Church in the modern period. In his *The Law of War*, Vitoria sets forth a formal discussion of the lawfulness of Christians waging war, the causes and authorization of just war, and the conduct of just war and just victory.²⁴¹

²³⁹ Martin Luther, *Temporal Authority: To What Extent It Should Be Obeyed*, as quoted in O'Donovan, *From Irenaeus to Grotius*, 595.

²⁴⁰ *Ibid.*, 600-601.

²⁴¹ O'Donovan, *From Irenaeus to Grotius*, 613.

In *De Indis*, Vitoria examines the wars of Charles V against the American Indians, condemning the lack of just cause. War, he insists, is not justified for religious reasons (to convert the heathen), nor for economic causes (to take their gold), nor for political reasons (to extend the empire). The Indians, however pagan, immoral, and uncivilized are human beings with rights equal to those of all other persons.

By St. Thomas's teaching that for the just war a just cause is required; namely, that those who are attacked have deserved attack by some culpable action (*ST 2a2ae.40.1*). Hence Augustine says (*Quaestiones in Heptateuchum 6.10*): "The usual definition of just wars is that they are those which avenge injustices (*iniuriae*), when a nation or city is to be scourged for having failed to punish the wrongdoings of its own people or to restore property which has been unjustly stolen." If the barbarians have done no wrong, there is no just cause for war; this is the opinion shared by all the doctors, not only theologians but also jurists such as Hostiensis, Innocent IV, and others; Cajetan expounds it eloquently in his commentary on *ST 2a2ae.66.8*. I know of no author who opposes it. Therefore this would not be a legitimate title for occupying the lands of the barbarians and despoiling their previous owners of them.²⁴²

Natural law protects them against violence and injustice. Vitoria also asks whether the soldier who doubts the justice of a cause should fight. Ordinarily, one should trust the lawful government to do what is lawful. Nevertheless, if justice is seriously in doubt, and if careful inquiry does not allay those doubts, then the soldier should refuse to fight. Selective conscientious objection is the corollary of a just war ethic.²⁴³

The three central axioms of Vitoria's ethic of war were:

- Waging war is an act of the political authority with the purpose of safeguarding the common good by avenging and punishing wrongdoing.
- Waging war belongs to independent commonwealths or sovereign rulers who exercise this power on behalf of the world community
- The judicial purpose of war constrains at every point the means that are deployed.²⁴⁴

²⁴² Francisco de Vitoria, *De Indis*, 2, as quoted in O'Donovan, *From Irenaeus to Grotius*, 621.

²⁴³ O'Donovan, *From Irenaeus to Grotius*, 612-613. cf. Arthur F. Holmes, *The Just War*.

²⁴⁴ *Ibid.*, 613.

John Calvin (1509-1564)

Unlike Aquinas, Calvin has little to say about the requirements for a just war, but he does insist that the lawful sovereign has a duty to take up arms to defend the commonwealth against those who attack it.²⁴⁵

Right Intention

Calvin cites sinful motives for undertaking wars unjustly.

Wealth encourages them audaciously to undertake unjust wars, incites them to gross dissipation, and at length hurries them forward to tyrannical excesses. First, therefore, God would have kings beware, lest in their pursuit of riches they should exhaust the blood of the people, and lest they should lavish their ill-gotten money in superfluous expenses.²⁴⁶

He assigns wickedness of heart as the reason of unjust wars.

He intimates afterward in what manner they stirred up unjust war by the wicked calumnies which they spread, as they could not crush a good and innocent person by violence, otherwise than by first overwhelming him with calumny.²⁴⁷

In *The Institutes* in the context of vowing, he discusses the right attitude by godly leaders concerning waging war.

In the ancient peace offerings which pious kings and commanders, when about to engage in a just war, vowed that they would give if they were victorious, or, at least, if the Lord would deliver them when pressed by some greater difficulty.²⁴⁸

Calvin also addresses the issue of dealing righteously with the law—with the right attitude.

But it is the duty of all magistrates here to guard particularly against giving vent to their passions even in the slightest degree. Rather, if they have to punish, let them not be carried away with headlong anger, or be seized with hatred, or burn with implacable severity. Let them also (as Augustine says) have pity on the common nature in the one whose special fault they are punishing. Or, if they must arm themselves against the enemy, that

²⁴⁵ John Calvin, *Institutes of the Christian Religion*, IV.20, translated by Rev. Charles James Anderson, (AGES Software, Albany, Oregon, 1998), 1406.

²⁴⁶ John Calvin, "Harmony of the Law, First Commandment," *Commentaries on the Four Last Books of Moses*, p. 62.

²⁴⁷ John Calvin, *Commentary on the Psalms*, Volume First, Translated by Rev. Charles James Anderson, (AGES Software, Albany, Oregon, 1998), 768.

²⁴⁸ John Calvin, *Institutes*, 4.13.4, 1406.

is, the armed robber, let them not lightly seek occasion to do so; indeed, let them not accept the occasion when offered, unless they are driven to it by extreme necessity. For if we must perform much more than the heathen philosopher required when he wanted war to seem a seeking of peace, surely everything else ought to be tried before recourse is had to arms. Lastly, in both situations let them not allow themselves to be swayed by any private affection, but be led by concern for the people alone. Otherwise, they very wickedly abuse their power, which has been given them not for their own advantage, but for the benefit and service of others.²⁴⁹

Calvin looks at the soldier as an agent of God's love. As he argues, "Paul meant to refer the precept of respecting power of magistrates to the law of love."

The soldier is thus as much an agent of God's love as he is of God's wrath, for the two characteristics are harmonious in God. Calvin argues in this way because he holds that to soldier justly—to restrain evil out of love for neighbor—is a Godlike act. It is Godlike because God restrains evil out of love for His creatures. None of this is to say that we fully imitate God or Christ when we use force justly, for the just soldier's acts can never be redemptive acts—acts that have a saving quality for those who are targets of the acts of force (except, of course, in the sense that the just soldier "saves" the unjust neighbor from more unjust acts). Yet the just soldier who cultivates the military virtues in such a way as to harness and direct them toward his final end—beatitude with God—may nevertheless be said to be one who, as the Reformers liked to say, follows Christ at a distance.²⁵⁰

Calvin insists that wars should not be waged in anger or to vent passions on others. It is a sign that we have fallen short when our passions lead us to use force unjustly. This is why Calvin argues that princes should go to war only when driven to it by necessity and out of concern for the public good.²⁵¹

Just Cause

Calvin's longest and most systematic discourse on war is found in his *Institutes* IV.20 where he devotes two entire sections to the topic of the right of civil government to wage war. Sections 11 ("On the Right of the Government to Wage War") and 12 ("Restraint and Humanity in War") are directed against the pacifism of the Anabaptists, defending

²⁴⁹ John Calvin, *Institutes*, 4.20.12, 495-496. NB: The reference here to Augustine is to his two works: Augustine, *Letters* 138 2.15; 130 6.13 and *Sermons* 13.7.3-13.8.4; and the reference to the heathen philosopher is to Cicero, *On Duties* 1.23.79; 1.11.35.

²⁵⁰ Darrell Cole, "Good Wars,," 27-31.

²⁵¹ *Ibid.*

rulers' right to resort to war to defend their subjects from violence whether from sedition or invasion. The fourth and sixth articles of the Anabaptists' Schleitheim Confession of 1527 denied this.

It is asked about the sword, whether a Christian may hold a position of governmental authority if he is chosen for it. This is our reply: Christ should have been made a king, but he rejected this (John 6:15) and did not view it as ordained by his father. We should do likewise and follow him. In this way we will not walk into the snares of darkness. . . Also, Christ himself forbids the violence of the sword and says, 'Worldly princes rule,' etc, 'but not you.' (Matt. 20:25)

[It is not] fitting for a Christian to be a magistrate because the authorities' governance is according to the flesh, but the Christian's is according to the spirit. Their houses and dwellings remain in this world, but the Christian's is in heaven. Their weapons of conflict and war are carnal and only directed against the fortifications of the devil. Worldly people are armed with spikes and iron, but Christians are armed with the armor of God.²⁵²

The classical pacifist position stated that it was sinful for a *Christian* to hold political office. The Anabaptists, following Romans 13, did not deny that the state had the right to use capital punishment. It was the function of the state to execute judgment with the sword; and since a Christian was not allowed to take a life, he was not allowed to hold public office. As opposed to the Anabaptists' theological reasoning, today's pacifists, however, have adopted a humanistic and modernistic sentimentality. They categorically reject even the state from having the right to the sword including a military.

Calvin's whole treatment of the Christian's attitude to magistrates, law, and litigation (IV.20:4-23) reflects his apprehension of anarchy from the Anabaptist rejection of the state.²⁵³

But kings and people must sometimes take up arms to execute such public vengeance. On this basis we may judge wars lawful which are so undertaken. For if power has been given them to preserve the tranquility of their dominion, to restrain the seditious stirrings of restless men, to help those forcibly oppressed, to punish evil deeds — can they use it more opportunely than to check the fury of one who disturbs both the repose of private individuals and the common tranquility of all, who raises seditious tumults, and by whom

²⁵² *The Schleitheim Confession*. Available from <http://www.anabaptists.org/history/schleith.html>. Internet; accessed 1 July 2002.

²⁵³ John Calvin, *Institutes*, 4.20.11, 649-650.

violent oppressions and vile misdeeds are perpetrated? If they ought to be the guardians and defenders of the laws, they should also overthrow the efforts of all whose offenses corrupt the discipline of the laws. Indeed, if they rightly punish those robbers whose harmful acts have affected only a few, will they allow a whole country to be afflicted and devastated by robberies with impunity? For it makes no difference whether it be a king or the lowest of the common folk who invades a foreign country in which he has no right, and harries it as an enemy. All such must, equally, be considered as robbers and punished accordingly. Therefore, both natural equity and the nature of the office dictate that princes must be armed not only to restrain the misdeeds of private individuals by judicial punishment, but also to defend by war the dominions entrusted to their safekeeping, if at any time they are under enemy attack. And the Holy Spirit declares such wars to be lawful by many testimonies of Scripture.²⁵⁴

Calvin notes that it is lawful for government to wage wars, saying that there is no difference between a robber who harms a few and those who invade a country. Therefore, the authorities are to protect the citizens under their charge if they are attacked, just as they restrain private citizens in their actions by judicial punishment.

In defending just war, Calvin first addresses the Anabaptists' contention that the New Testament does not teach on war.

But if anyone object against me that in the New Testament there exists no testimony or example which teaches that war is a thing lawful for Christians, I answer first that the reason for waging war which existed of old still persists today; and that, on the other hand, there is no reason that bars magistrates from defending their subjects. Secondly, I say that an express declaration of this matter is not to be sought in the writings of the apostles; for their purpose is not to fashion a civil government, but to establish the spiritual Kingdom of Christ. Finally, that it is there shown in passing that Christ by his coming has changed nothing in this respect. For if Christian doctrine (to use Augustine's words) condemned all wars, the soldiers asking counsel concerning salvation should rather have been advised to cast away their weapons and withdraw completely from military service. But they were told: 'Strike no man, do no man wrong, be content with your wages'. When he taught them to be content with their wages, he certainly did not forbid them to bear arms.²⁵⁵

Because soldiering is conceived as an office of love, Calvin rejects outright mercenary soldiering—a popular profession among the Swiss of Calvin's time—since it encourages soldiers to fight merely out of love of money and not out of love for their

²⁵⁴ Ibid., p. 494.

²⁵⁵ John Calvin, *Institutes*, 4.20.12, 495.

neighbors. For Calvin, soldiering loses its Christian function and legitimacy when it becomes a commodity.²⁵⁶

Finally, Calvin addresses the need to have garrisons, leagues, and civil defense.

Moreover, this same right to wage war furnishes the reason for garrisons, leagues, and other civil defenses. Now, I call ‘garrisons,’ those troops which are stationed among the cities to defend the boundaries of a country; ‘leagues,’ those pacts which are made by neighboring princes to the end that if any trouble should happen in their lands, they may come to one another’s aid, and join forces to put down the common enemies of mankind. I call ‘civil defenses,’ things used in the art of war.²⁵⁷

jus in bello

In his commentary on Deuteronomy 20:10, Calvin explicitly addresses *jus in bello*.

He [Moses] now teaches that, even in lawful wars, cruelty is to be repressed, and bloodshed to be abstained from as much as possible. He therefore commands that, when they shall have come to take a city, they should first of all exhort its inhabitants to obtain peace by capitulating; and if they should do so, to keep them alive, and to be content with imposing a tribute on them. This principle of equity was naturally implanted in all nations; hence heralds took their rise, nor did they commence a just war without a solemn proclamation. Besides, inasmuch as the word *hostis* (an enemy) formerly signified a foreigner (*peregrinum*) the Romans mitigated by its mildness the sadness of the reality. On this ground they deemed that faith was to be kept with an enemy; and that sentiment of Cicero is worthy of praise, ‘that wars must not be undertaken except that we may live in unmolested peace.’ But if God would have his people mindful of humanity in the very midst of the din of arms, we may hence infer how greatly displeasing to Him is human bloodshed. Even those whom He has armed with his authority, He would still have disposed to clemency, and He represses their ardor, lest they should stain with blood the swords given them by His permission. How, then, shall it be lawful for a private person to assume the sword for the purpose of killing his brother? We now understand the object of the instructions here given, and how appropriately they are connected with the Sixth Commandment.²⁵⁸

His discussion above on *hostis* and *peregrinum* are taken from Cicero’s *de Officio*,

1:11-13. Concerning the ban in Deuteronomy 20:12, Calvin continues:

The permission here given seems to confer too great a license; for, since heathen writers command even the conquered to be spared, and enjoin that those should be admitted to mercy who lay down their arms, and cast themselves on the good faith of the General, although the battering-ram may have actually made a breach in the wall, how does God, the Father of mercies, give His sanction to indiscriminate bloodshed? It has already been stated, that more was conceded to the Jews on account of their hardness of heart, than

²⁵⁶ Darrell Cole, “Good Wars.”

²⁵⁷ John Calvin, *Institutes*, 4.20.12, 496.

²⁵⁸ John Calvin, “Harmony of the Law, Sixth Commandment,” 41-42.

was justly lawful for them. Unquestionably, by the law of charity, even armed men should be spared, if, casting away the sword, they crave for mercy; at any rate it was not lawful to kill any but those who were taken in arms, and sword in hand. This permission, therefore, to slaughter, which is extended to all the males, is far distant from perfection.²⁵⁹

By “heathen writers,” Calvin is referring again to Cicero’s *de Officiis*, 1:11.²⁶⁰

Conclusions about Calvin

Calvin points out that Christ’s gentle nature—his willingness to suffer violence at the hands of Jewish and Roman authorities—is grounded in his priestly office of reconciliation and intercession. Christ’s pacific nature is inextricably tied to his role as redeemer and cannot be intended as a model for Christian behavior. No Christian can or should try to act as a redeemer, but all can and should follow Christ in obeying the commands of the Father, including His commanding the just use of force.²⁶¹

Francisco Suárez (1548-1617)

Concerning just war, Suárez follows closely the developments of Cajetan and Vitoria in the sixteenth century. At the heart Suárez’ just war theory is the notion that war is an extension of the judicial acts of government into a context where no jurisdiction exists. Suárez sees this as an encounter between an *offender* of the “law of nations” and an *authority* authorized to restrain or punish him.²⁶²

Suárez deals explicitly and systematically with the topic of just war in *The Three Theological Virtues, Faith, Hope, and Charity* in the section “*On Charity*, Disputation 13, *War*.” In that work, he makes a helpful three-fold distinction: first, war is conducted

²⁵⁹ *Ibid.*, 42.

²⁶⁰ “*Et cum iis, quos vi deviceris, consulendum est; tum, qui, armis positis, ad imperatorum fidem confugient, quamvis murum aries percusserit, recipiendi sunt.*” — Cicero, *de Officiis*, 1:11.

²⁶¹ Darrell Cole, “Good Wars.”

²⁶² O’Donovan, *From Irenaeus to Grotius*, 726.

between two princes or two states; second, sedition is between a prince and his state or between citizens and their state; third, strife or duel is between private persons. Using Aristotelian categories, he notes that the difference between these seems to be material rather than formal.²⁶³

Categorical Passivism

Suárez first deals with categorical passivism, asserting that the position is heretical, evil, and inconsistent with charity. He then advances four propositions:

- War as such is not intrinsically evil or forbidden to Christians.
- Defensive war is sometimes not merely permitted but required.
- Even offensive war is not evil of itself.
- Just war categories must be met: the war must be waged by a legitimate authority; there must be a just cause and reason alleged; and it must be properly and fairly conducted at its inception, in prosecution, and in victory.

Offensive War

For Suárez, just war may be either defensive or offensive. The right to armed self-defense lies with anybody. The right of offensive war, however, lies only with a political authority. Its purpose is either to recover damages or impose punishment for acts against the common good, and it is subject to the restraints of just proportion. Contrary to many contemporary just war advocates, Suárez refuses to allow the category of self-defense to expand beyond the strict limits of active or immediate resistance, thus keeping the scope of defense from expanding indefinitely.²⁶⁴

In the case of offensive war, he further makes the distinction between an injury that is *actually being done* and an injury that has *already been done*.

²⁶³ Suárez, *The Three Theological Virtues, Faith, Hope, and Charity: On Charity, Disputation 13, War, 1* as cited in Oliver O'Donovan and Joan Lockwood O'Donovan, *From Irenaeus to Grotius: A Sourcebook in Christian Political Thought 100-1625*, Eerdmans, 1999, 736-737.

²⁶⁴ O'Donovan, *From Irenaeus to Grotius*, 726.

- The injury is *actually being done* either when the unjust action itself is physically being performed or when the individual takes immediate steps to protect and reestablish his possessions.
- In the case where the injury has *already been done*, we have the category of an offensive war.

Just War Conditions

For a war to be considered just, Suárez requires three conditions to be met. First, there must be a just cause for going to war. Second, the war must be waged by legitimate authority. Third, the war must be conducted rightly.

Just Cause

Suárez then offers three propositions to determine whether a cause is just. First, there must be a legitimate and necessary ground. Second, the wrongdoer should be justly punished if he refuses to give adequate satisfaction for the injury. Third, whoever begins a war without a just ground is bound to make reparation for all the damage.

Suárez proposes three legitimate and necessary grounds for a just war. First, the offense must be a serious one. Second, there are various kinds of provocations that might constitute going to war. Third, there are two occasions for an offensive war: primarily, to make reparation to the injured party for the damage suffered; secondarily, that the offender may be properly punished.

Suárez rightly notes that the prosecution of the aggressor in war only makes sense if he is unwilling to give satisfaction or make restitution. If the aggressor *were* ready to make amends for the injury inflicted, then pursuing him would make the war unjust. I will address this more under the section on legitimate authority, for it is the responsibility of the governing powers to ensure that the aggressor makes amends.

Finally, he states that whoever begins a war without just grounds sins not only against charity towards his neighbor but also against justice. The aggressor is obliged to reimburse all the damages inflicted.

Legitimate Authority

Suárez notes that there must be some legitimate authority. The problem is that there is no authority to appeal to between sovereign nations. He acknowledges that there is no superior, concluding that the authority must reside with the sovereignty of the injured state. So war serves to administer just punishment in place of a court.

Suárez makes the biblical distinction between private and corporate ethics. He notes that scriptures such as “Repay no one evil for evil,” and “never avenge yourselves”²⁶⁵ refer to private authority and the intent to do evil to another person. But he extends Romans 13:4 to apply to international wars: “if this is done by lawful public authority with the intention of holding an enemy to his duty and bringing what was out of order back into line, it is not only not forbidden but is necessary.”²⁶⁶

Suárez also answers the objection that this makes the same party both plaintiff and judge. Again, he argues against this objection jurisdictionally, comparing the public authority of the prince to that of God. He notes that an individual will easily exceed the limits of punishment due to personal emotions; but for the state, public discourse will mitigate the response from being too extreme. Also, the authority is entrusted to a public agent not a private individual. Acts of punitive justice are the prerogative and jurisdiction

²⁶⁵ Romans 12:17, 19.

²⁶⁶ Suárez, *The Three Theological Virtues, Faith, Hope, and Charity: On Charity, Disputation 13, War*, 1 as cited in O’Donovan, *From Irenaeus to Grotius*, 738.

of the state, and private persons do not possess and do not acquire that authority through others' offenses—otherwise there would be no need for public jurisdictional authority.

Suárez goes so far as to say that if the state is unwilling or unable to punish the aggressor, a private individual should endure the loss patiently because he has no other legitimate recourse. Acts of punitive justice are the prerogative of a jurisdiction, which private persons do not possess and do not acquire through others' offenses or through the lack of responsiveness by the state.²⁶⁷

Confidence of success

Cajetan, in his commentary on Aquinas' *Summa*, concludes that for a war to be just, the prince must be so certain of the extent of his power that he is morally assured of victory. Cajetan's rationale is that the prince could do more harm than good to his own nation; and because initiating an offensive war is to assume an active role, an active party must always be the stronger in order to overcome resistance.

Suárez is not satisfied with Cajetan's conclusion nor his arguments for three reasons. First, certainty of victory is impossible to assure. Second, because waiting for that degree of certainty may not serve the common good—even when victory is in doubt. Third, a weaker nation could never war against a stronger aggressor since the certainty Cajetan proposes would never occur.

Instead, Suárez applies the distinction between a defensive war and an offensive war. In a defensive war, resistance should be attempted even if outcome is improbable. His rationale is that defensive wars are a matter of necessity and not of statistics. However, in

²⁶⁷ This would mean that in the case of guerilla warfare, a private individual has the right to protect himself and his family, but he would have no right to pursue hostilities himself.

an offensive war, it is a matter of choice whether to pursue the aggressor or not. In this case, if the positive outcome is less probable, then an offensive war should almost always be avoided. However, an offensive war may be pursued if the nation has a likelihood of victory and the benefits of the campaign outweigh the costs to the nation.

Conducting war properly and fairly

Suárez' greatest contribution is in the area of defining the immunity of noncombatants. He declares that the innocent "as such" may not be killed but allows that in case of necessity they may be killed "incidentally." It is only the proportionate good that justifies putting the innocent at risk at all—intended effects and foreseen side effects. But necessity is not sufficient justification, for the distinction between killing *per se* and killing *per accidens* must be maintained: their death may not be the *object* of the attack, only a foreseen *side effect*.²⁶⁸

Suárez sets forth six propositions on the right way to conduct war.

- Before going to war, a prince must declare his grounds and demand restitution.
- All methods necessary to success may be used, provided they include no intrinsic wrong done to innocent people.
- After victory, damages sufficient for restitution and punishment may be imposed.
- If damages inflicted upon the guilty are enough for restitution and satisfaction, they cannot rightly be extended to the innocent.
- It is permitted to deprive the innocent of their goods and liberty if such a course of action is essential to complete satisfaction.
- Innocent persons may absolutely not be killed, even if the punishment inflicted upon their state may be thought inadequate; however, they may be killed *per accidens* when such an act is necessary to the pursuit of victory.

I will spend time examining Suárez' latter propositions because they most directly affect my conclusions concerning a just response to terrorism.

²⁶⁸ O'Donovan, *From Irenaeus to Grotius*, 726-727.

Damages for Restitution and Punishment

First, Suárez notes that the enemy is made up of two classes of persons: the “guilty” and the “innocent.” The latter category includes women, children, those incapable of bearing arms (e.g., the handicapped), ambassadors, priests, etc. All others among a nation are considered guilty because those who are capable of taking up arms are judged to have actually done so. He acknowledges that there are those who are capable of bearing arms but it is clear that they actually had no part in the unjust aggression; therefore, they themselves are guiltless. There is another type of persons within a nation—the foreigners and strangers. These, however, are not citizens of the state and are therefore not counted among the enemy unless they are allies in the war.²⁶⁹

Second, damages inflicted upon the guilty are enough for amends and recompense. These cannot rightly be extended to the innocent without demanding an unjust compensation.

Third, he takes up the consideration of depriving the innocent of their goods and liberty when such a course of action is essential to complete redress. Suárez reasons that the innocent form a portion of the one, whole, unjust state; and because of the “one,” the “many” may be punished even though they do not themselves share in the blame. Although Suárez does not himself use covenantal terminology, what he is proposing is a sense of corporate curses coming upon the innocent by virtue of their covenantal status with the unjust nation.

Noncombatant Immunity

²⁶⁹ This latter category is of interest in our discussion, for there were many Afghan men who were not a part of the Taliban and who did not take up arms or support the terrorist actions against the United States.

Most significant to the thesis of this work is Suárez' proposition that innocent persons as such may not be killed even if the punishment inflicted upon their nation would otherwise be thought inadequate. He mitigates that unconditional statement by saying that the innocent may be killed incidentally (*per accidens*) when such an act is necessary to the pursuit of victory. However, when the innocent *can* be separated from the guilty, targeting the innocent would be an act of murder. He cites Ambrose's excommunication of Theodosius for the slaughter of the innocent as an example of the church's dealing severely with those who take life unjustly in war.

He acknowledges that some procedures necessary for victory involve the death of innocent persons—burning of cities, sacking of fortresses, etc—and whoever has a right to end the war has a right to these means. In these cases, the death of the innocent is not intended but is an incidental consequence; so it is not *willed* but rather *accepted* (*permissa*)—otherwise it would be impossible to end a war.²⁷⁰

Hugo Grotius (1583-1646)

Grotius, sometimes referred to as “the father of international law,” was a 16th century Dutch Protestant who lived in the shadow of the Thirty-Years War. Grotius attempted to deal with the new state of affairs brought about by the Reformation and the ensuing loss of universal power by the Pope and the Emperor. In 1625, he wrote the book *De Jure Belli ac Pacis (On the Rights of War and Peace)* concerning the rights of nations to use force in self-defense.²⁷¹ Grotius based his understanding on Cicero's view of the need for

²⁷⁰ This position has relevance later because of how terrorists surround themselves with innocent villagers and children as a shield to protect them from retaliation—for example, the Viet Cong and the Taliban hiding among the villagers.

²⁷¹ A full copy of the text can be found online at <http://www.geocities.com/Athens/Thebes/8098>. Unless otherwise noted, all subsequent citations are from this online version of the text.

a declaration of war and argued that the purpose of just war theory is to provide “succor and protection for the sick and wounded in war, combatants and civilians alike.”²⁷²

Grotius borrowed significantly from the Thomistic tradition in his theory of just war. Grotius regarded war as an exercise of governmental authority and gave significant weight to considerations of social welfare and the requirements of biblical law. Although his theory of civil government gives a more prominent role to individual rights than did his Roman Catholic counterparts, these particular claims are derived from a more far-ranging social rationale.²⁷³

Grotius returns to Aquinas, defining natural law as a discerning judgment in which things are good or bad by their own nature. This was a break from Calvinist ideals in that God was no longer the only source of ethical qualities. For Grotius, it is not necessary to prove just war theory by consulting the established laws of the nations of Europe or their customs; rather, those laws are known through natural law.²⁷⁴ Natural law sees things that are by themselves good as associated with the nature of man.

Right signifies nothing more than what is just, and that, more in a negative than a positive sense; so that *right* is that, which is not unjust. Now any thing is unjust, which is repugnant to the nature of society, established among rational creatures. Thus for instance, to deprive another of what belongs to him, merely for one’s own advantage, is repugnant to the law of nature.²⁷⁵

In the *Prolegomena*, Grotius suggests that there is a common law among nations that is valid for war. Then he asserts the need for these principles.

Throughout the Christian world I observed a lack of restraint in relation to war, such as even barbarous race should be ashamed of; I observed that men rush to arms for slight

²⁷² David J. Bederman, *Reception of the Classical Tradition*, 30.

²⁷³ O’Donovan, *From Irenaeus to Grotius*, 553.

²⁷⁴ Bederman, *Reception of the Classical Tradition*, 32.

²⁷⁵ Hugo Grotius, *On the Rights of War and Peace*, 1:1:3. Available from <http://www.geocities.com/Athens/Thebes/8098/book1final.htm>. Internet; accessed on 1 July 2002.

causes, or no cause at all, and that when arms have once been taken up there is no longer any respect for law, divine or human; it is as if, in accordance with a general decree, frenzy had openly been let loose for the committing of all crimes.²⁷⁶

This grounding of moral law in nature as opposed to the Word of God is problematic. Grotius goes so far as to make natural law superior to the Lord Himself. “Now the Law of Nature is so unalterable, that it cannot be changed even by God himself. For although the power of God is infinite, yet there are some things, to which it does not extend.”²⁷⁷ He further continues that the Mosaic Law has no application to us today and therefore has no obligation upon us in our consideration of war,²⁷⁸ other than what we voluntarily submit.²⁷⁹

Natural law and natural theology have historically had a place in Reformed theology, though their function has been under debate.²⁸⁰ However, Cornelius Van Til has rightly pointed out that the teachings and practices of the church must above all be faithful to the Scriptures. The argument for natural law minimizes the ability of the reprobate mind to twist the truth, to celebrate that which is evil as good, and to ignore the radical cultural differences that produce societies with unbiblical ethics.²⁸¹

Johnson credits Grotius for secularizing the just war theory.²⁸² However, O’Donovan disagrees. He sees Grotius as a true heir of the just war theological tradition and the rift occurring with Hobbes who broke with the structure of Christian theological-political

²⁷⁶ Grotius, *On the Rights of War and Peace, Prolegomena*.

²⁷⁷ Grotius, *On the Rights of War and Peace*, 1.1.10.

²⁷⁸ Grotius, *On the Rights of War and Peace*, 1.1.15-17.

²⁷⁹ Grotius, *On the Rights of War and Peace*, 1.2.5.

²⁸⁰ John T. McNeill, *Natural Law in the Teaching of the Reformers*, *Journal of Religion*, 26, 1946, pp. 168-82.

²⁸¹ Romans 1:20-32.

²⁸² James Turner Johnson, “Just War Tradition and Low-Intensity Conflict,” 147-148.

thought for a rationalistic tradition.²⁸³ I agree with Johnson's assessment of Grotius' secularizing the just war theory. Although he uses Scripture, Grotius does not ground his arguments in Scripture but rather appeals to them as equally as he appeals to pagan documents to confirm his natural law arguments.

In *On the Rights of War and Peace*, Grotius addresses the issue of just war. I will examine this text to determine Grotius' contribution to the question of just war. *On the Rights of War and Peace* is broken into three books with various chapters. In it, Grotius sets forth his just war theory based on natural law.

Categorical Pacifism

Grotius engages the issue of categorical pacifism by addressing three concerns. First, he acknowledges that some of the Church Fathers (e.g., Origen, Tertullian, etc) wrote their private opinions, but theirs was not the corporate teaching of the church on this matter. He also points out that these writers themselves were not consistent across their writings with their pacifistic ideas. Grotius points out that Tertullian discusses John's admitting soldiers to baptism, Christ's approving of them, and Peter's telling them to be faithful. Second, there were often circumstantial reasons for refusing to bear arms, not theological reasons. These reasons were often due to inconveniences; and when the inconveniences were not present, Christians served willingly. Third, the early church fathers often told disciples not to do something even though it was lawful: for instance, oath taking, not rising to office, and not remarrying. Grotius sees the foreswearing of a military profession in a similar category—noble but lawful.²⁸⁴

²⁸³ O'Donovan, *From Irenaeus to Grotius*, 787.

²⁸⁴ Hugo Grotius, *On the Rights of War and Peace*, 1.2.9.

Just Cause

When discussing the right causes of war, Grotius determines a just cause based on natural reason. “As there is no special edict prescribing the just causes for which war may be undertaken, the determination of them is left to the discovery of natural reason.”²⁸⁵ Grotius then extends “natural reason” to the example of sacred Scripture and the practice of wise nations to support the conclusions of that natural reasoning.

He allows for a defensive just war. “A just cause then of war is an injury, which though not actually committed, threatens our persons or property with danger.”²⁸⁶ “When an assailant seizes any weapon with an apparent intention to kill me I have a right to anticipate and prevent the danger.”²⁸⁷ This allows for a defensive attack prior to actual hostilities being committed by an aggressor.

Grotius sees three justifiable causes for war: defense, indemnity, and punishment. In “indemnity,” Grotius includes the notion of recovering what was lost. “For recovering by war what we have lost, includes indemnity for the past, as well as the prosecution of our claim to a debt.”²⁸⁸

Concerning the buildup of power in a *hostile* country, Grotius discusses when it is sufficient to authorize hostilities as a defensive measure.

Apprehensions from a neighboring power are not a sufficient ground for war. For to authorize hostilities as a defensive measure, they must arise from the necessity, which just apprehensions create; apprehensions not only of the power, but of the intentions of a formidable state, and such apprehensions as amount to a moral certainty. For which reason the opinion of those is by no means to be approved of, who lay down as a just ground of war, the construction of fortifications in a neighboring country, with whom there is no existing treaty to prohibit such constructions, or the securing of a strong hold, which may at some future period prove a means of annoyance. For as a guard or against such apprehen-

²⁸⁵ Hugo Grotius, *On the Rights of War and Peace*, 1.2.2.

²⁸⁶ Hugo Grotius, *On the Rights of War and Peace*, 2.1.2.

²⁸⁷ Hugo Grotius, *On the Rights of War and Peace*, 2.1.5.

²⁸⁸ Hugo Grotius, *On the Rights of War and Peace*, 2.1.2.

sions, every power may construct, in its own territory, strong works, and other military securities of the same kind, without having recourse to actual war.²⁸⁹

“Saber rattling” of a hostile country that demonstrates both the power and the intentions to hostilities is sufficient grounds for a defensive war to be initiated.

Grotius starts with the lawfulness of personal defense as the basis of his discussion of the lawfulness of a just war.

As the loss of a limb, especially that of a principal limb in the body, is a grievous detriment, and nearly equal to the loss of life, to which may be added the probability of death ensuing from such a calamity; the lawfulness of killing any one, who makes such an attempt, if the danger cannot otherwise be avoided, scarce admits of a doubt. Neither is there any more difficulty in allowing the same right for the personal defense of chastity, the preservation of which, both in the common estimation of men, and by the divine law, is deemed of equal value with life itself.²⁹⁰

Grotius extends the argument for personal defense to protecting one’s property and possessions.

In strict justice, it cannot be denied that we have a right to kill a robber, if such a step is inevitably necessary to the preservation of our property. For the difference between the value of life and property is overbalanced by the horror which a robber excites, and by the favourable inclination felt by all men towards the injured and innocent. From whence it follows, that regarding that right alone, a robber may be wounded or killed in his flight with the property, if it -cannot otherwise be recovered.²⁹¹

From the discussion of the right to defend one’s person and property, Grotius further extends the argument to private war. A private war is “an instantaneous exercise of natural right, which ceases the moment that legal redress can be obtained,” the objective of which is to prevent remote and immediate aggression.²⁹² Since private war extends only to self-defense, one may only avert the wrong done. However,

Sovereign powers have a right not only to avert, but to punish wrongs. From whence they are authorized to prevent a remote as well as an immediate aggression. Though the suspicion of hostile intentions, on the part of another power, may not justify the commence-

²⁸⁹ Hugo Grotius, *On the Rights of War and Peace*, 2.21.5.

²⁹⁰ Hugo Grotius, *On the Rights of War and Peace*, 2.1.6-7.

²⁹¹ Hugo Grotius, *On the Rights of War and Peace*, 2.1.11.

²⁹² Hugo Grotius, *On the Rights of War and Peace*, 2.1.16.

ment of actual war, yet it calls for measures of armed prevention, and will authorize indirect hostility.²⁹³

From “natural reason,” he infers that the justifiable causes of war are defense, recovery of one’s property or debt, or the punishment of offences committed in war for defense of life. A just war is lawful against an aggressor only; the danger must be present and real, not an imaginary danger. He sees self-defense as lawful in public war, yet it is not lawful to attack any power *solely* because of its increasing greatness. The hostile measures of such an aggressor are not justified on the plea of self-defense.²⁹⁴

Grotius addresses the issue of attacking a nation solely because of its increasing greatness. He denies in the strongest possible terms that such an action is just.

Some writers have advanced a doctrine which can never be admitted, maintaining that the law of nations authorizes one power to commence hostilities against another, whose increasing greatness awakens her alarms. As a matter of expediency such a measure may be adopted, but the principles of justice can never be advanced in its favor. The causes which entitle a war to the denomination of just are somewhat different from those of expediency alone. But to maintain that the bare probability of some remote, or future annoyance from a neighboring state affords a just ground of hostile aggression, is a doctrine repugnant to every principle of equity. Such however is the condition of human life, that no full security can be enjoyed. The only protection against uncertain fears must be sought, not from violence, but from the divine providence, and defensive precaution.²⁹⁵

Just Intention

Grotius follows the Thomistic understanding of “intention.” He makes the distinction between murder and killing. “Every act of homicide does not amount to murder, but only that, which is committed with a willful and malicious intention to destroy the life of an innocent person,” and he extends this from the interpersonal to the corporate level.²⁹⁶

Yet, intentions are more than just a “gut feeling” about something.

²⁹³ Hugo Grotius, *On the Rights of War and Peace*, 2.1.16.

²⁹⁴ Hugo Grotius, *On the Rights of War and Peace*, 2.1.17. In this section, Grotius is addressing aggressions against a nation simply because it is increasing in greatness and becoming more powerful; but that nation has not shown any evil actions or intentions.

²⁹⁵ Hugo Grotius, *On the Rights of War and Peace*, 2.1.17.

²⁹⁶ Hugo Grotius, *On the Rights of War and Peace*, 1.2.5.

The effect of right which depends upon a man's intentions can never follow from a bare conjecture of his will, unless he has declared and proved it by some express and visible act. For actions being the only evidence of intentions, intentions can never of themselves alone without such acts be the object of human laws. No conjectures indeed respecting the acts of the mind can be reduced to mathematical certainty, but only to the evidence of probability at the utmost. For men by their words may express intentions different from their real ones, and by their acts counterfeit intentions which they have not. The nature of human society, however, requires that all acts of the mind, when sufficiently indicated, should be followed by their due effects. Therefore the intention, which has been sufficiently indicated, is taken for granted against him who gave such indication.²⁹⁷

In discussing the punishment of the wicked aggressors, Grotius makes it clear that revenge has no place in the intent of the just warrior.

Revenge is condemned both by Christian teachers and heathen philosophers. In this respect, the language of Seneca approaches very near to the perfection of Christian morals. He calls revenge, in its usual and proper acceptation, a term of inhumanity, differing from injury only in degree. For retaliation of pain can be considered as nothing better than excusable sin. Juvenal, after describing the different tempers, over which revenge exercises the most powerful dominion, and shewing the amiable characters over which it has no influence, concludes it to be the pleasure of a little and infirm mind. From the preceding arguments it is plain that punishment cannot justly be inflicted from a spirit of revenge.²⁹⁸

Grotius discusses the relationship between just motives and the justice of a war.

It is necessary to observe that a war may be just in its origin, and yet the intentions of its authors may become unjust in the course of its prosecution. For some other motive, not unlawful *in itself*, may actuate them more powerfully than the original right, for the attainment of which the war was begun. It is laudable, for instance, to maintain national honour; it is laudable to pursue a public or a private interest, and yet those objects may not form the justifiable grounds of the war in question. A war may gradually change its nature and its object from the prosecution of a right to the desire of seconding or supporting the aggrandizement of some other power. But such motives, though blamable, when even connected with a just war, do not render the war *itself* unjust, nor invalidate its conquests.²⁹⁹

Grotius addresses an entire chapter to unjust causes of war, attributing these to wrong motives. He refers to sinful motives as “colorable motives”—wars of plunder, wanting better land, coveting things belonging to other countries, etc.

It is proper now to consider whether all wicked acts are of that kind, which are punishable by human laws. In reply to which we may answer that they certainly are not.—In the first place, mere acts of the mind, or criminal intentions, though by subsequent confes-

²⁹⁷ Hugo Grotius, *On the Rights of War and Peace*, 2.4.3.

²⁹⁸ Hugo Grotius, *On the Rights of War and Peace*, 2.20.5.

²⁹⁹ Hugo Grotius, *On the Rights of War and Peace*, 2.22.17.

sion, or some other accident, they may come to the knowledge of others, are not punishable by human laws. Because, as it was proved in a former part of this treatise, it is not consonant to the law of nature, that *intentions only* should give rise to any right, or obligation amongst men. And in this sense the maxim of the Roman law is to be taken, *that no one deserves punishment for mere thoughts*. Yet this does not prevent intentions, when they have an influence upon the conduct, from being considered as actual deeds, and equally deserving of punishment.³⁰⁰

Deceit, Subterfuge, and Stratagems

Grotius distinguishes between negative and positive types of stratagems. A negative stratagem includes those actions that are not criminal, though calculated to deceive, where anyone uses a degree of dissimulation or concealment in order to defend his own property or that of others. A positive stratagem, when practiced in actions, is called a feint; and when used in conversation, it receives the name of a lie or falsehood.³⁰¹

Grotius acknowledges that some rejected the use of stratagems, but for an abstract concept of nobleness. “Some nations and individuals indeed have rejected the use of those stratagems, which even the law of nature allows to be employed as a means of self-defense against an enemy. But they did so, not from any opinion of their unlawfulness, but from a noble loftiness of mind, and from a confidence in their own strength.”³⁰²

Legitimate authority

Grotius distinguishes between two types of “right”—private and superior.

Right, strictly taken, is again twofold, the one *private*, established for the advantage of each individual, the other, *superior*, as involving the claims, which the state has upon individuals, and their property, for the public good. Thus the Regal authority is above that of a father and a master, and the Sovereign has a greater right over the property of his subjects, where the public good is concerned, than the owners themselves have. And when the exigencies of the state require a supply, every man is more obliged to contribute towards it, than to satisfy his creditors.³⁰³

³⁰⁰ Hugo Grotius, *On the Rights of War and Peace*, 2.20.18.

³⁰¹ Hugo Grotius, *On the Rights of War and Peace*, 3.1.8.

³⁰² Hugo Grotius, *On the Rights of War and Peace*, 3.1.20.

³⁰³ Hugo Grotius, *On the Rights of War and Peace*, 1.1.6.

In making this distinction, Grotius echoes Aquinas in making it a jurisdictional matter of going to war. He recognizes that the authority that the sovereign has is different from that of the individual. Concerning the definition of legitimate authority, Grotius writes:

The civil power is the sovereign power of the state. A state is a perfect body of free men, united together in order to enjoy common rights and advantages. The less extensive right, and not derived from the civil power itself, although subject to it, is various, comprehending the authority of parents over children, masters over servants, and the like. But the law of nations is a more extensive right, deriving its authority from the consent of all, or at least of many nations.³⁰⁴

Grotius acknowledges *private war*, *public war*, and *mixed war*. Public war is carried on by the sovereign; private war is without authority from the state; and mixed war is by the sovereign on one side and private individuals on the other. Private war is for repelling violence. “When our lives are threatened with immediate danger, it is lawful to kill the aggressor, if the danger cannot otherwise be avoided.”³⁰⁵

Grotius notes that civil authority has the right to enter into “treaties, engagements, and other compacts,” which individual citizens do not.³⁰⁶ There is much that could be discussed in his chapter *On Treaties and on Engagements made by Delegates Exceeding Their Power*, but I want to focus in on his question in section eight. “In considering treaties, it is frequently asked, whether it be lawful to make them with nations, who are strangers to the Christian religion.” We saw in chapter three of this thesis that covenants should not be entered into with non-believing nations. However, Grotius appeals to natural law as opposed to biblical law for his conclusion.

According to the law of nature, admits not of a doubt. For the rights, which it establishes, are common to all men without distinction of religion. The gospel has made no change in this respect, but rather favours treaties, by which assistance in a just cause may be afforded even to those, who are strangers to religion. For to embrace opportunities of doing

³⁰⁴ Hugo Grotius, *On the Rights of War and Peace*, 1.1.9.

³⁰⁵ Hugo Grotius, *On the Rights of War and Peace*, 2.1.3.

³⁰⁶ Hugo Grotius, *On the Rights of War and Peace*, 2.15.2-3.

good to all men is not only permitted as laudable, but enjoined as a precept. For in imitation of God, who makes his sun to rise upon the righteous and the wicked, and refreshes them both with his gracious rain, we are commanded to exclude no race of men from their due share of our services. Yet, in equal cases, it admits of no doubt, that those within the pale of our own religious communion have a preferable claim to our support. In addition to the foregoing arguments we may observe that as all Christians are considered as members of one body, which are required to feel for the pains and sufferings of each other, this precept applies not only to individuals, but to nations and kings in their public capacity. For the rule of duty is not to be measured by the inclination of individuals, but by the injunctions of Christ. And in some cases the ravages of an impious enemy can only be opposed by a firm alliance among Christian kings, and governments. And it is a duty from which nothing, but inevitable necessity, and their immediate attention being engrossed by the prosecution of other wars, can excuse them.³⁰⁷

Grotius appeals to the commonness of the humanity of man for entering into treaties with pagan nations. However, from a biblical perspective, treaties are covenantal in nature and not merely a contract that can be dismissed. Entering into a treaty with a pagan government is fraught with danger, as the Hebrews found out in Exodus 23 and Deuteronomy 7.

Grotius tells us that sovereign nations have the right to demand the surrender or punishment of criminals from the aggressor nation that have fled into another nation for refuge.

The right of demanding the surrender or punishment of criminals that have fled into other kingdoms, has, in most parts of Europe, during the present, and the immediately preceding centuries, been generally exercised in cases, where the crimes were such as affected the safety of the state, or were attended with notorious atrocity.³⁰⁸

Grotius defines what is meant by the authority of a state in comparing an aggressive nation to a band of pirates or robbers.

A state, though it may commit some act of aggression, or injustice, does not thereby lose its political capacity, nor can a band of pirates or robbers ever become a state, although they may preserve among themselves that degree of subordination, which is absolutely necessary to the subsistence of all society. For with the latter, the commission of crime is the *sole* bond of union, whereas the former, though not always free from blame, but occasionally deviating from the laws of nature, which in many cases have been in a great measure obliterated, still regulate their conduct by the treaties, which they have made,

³⁰⁷ Hugo Grotius, *On the Rights of War and Peace*, 2.15.8-9.

³⁰⁸ Hugo Grotius, *On the Rights of War and Peace*, 2.21.5.

and certain customs that have been established, being united among themselves for the mutual support of lawful rights, and connected with foreign states by known rules of standing polity.³⁰⁹

Formal declaration

Grotius distinguishes between *formal* and *informal* war. A formal war is a public war that is solemn and authorized at the highest level of authority by a formal declaration. An informal war is less solemn, may be made without formalities—even against private persons—and may be made by lesser magistrates.³¹⁰ Grotius is clear in the need for a formal declaration of war.

But to make a war just, according to this meaning, it must not only be carried on by the sovereign authority on both sides, but it must also be duly and formally declared, and declared in such a manner, as to be known to each of the belligerent powers.³¹¹

Grotius describes three necessary parts, which form the civil-moral power for governing the state:

- The right of making its own laws.
- The right of executing those laws in its own manner.
- The right to appoint its own magistrates.

Grotius looks for a true definition of authority as comprehending “every possible branch of authority that can grow out of the possession and exercise of sovereign power.”³¹² He also defines the use of his term “sovereign.”

That power is called sovereign, whose actions are not subject to the control of any other power, so as to be annulled at the pleasure of any other human will. The term *any other human will* exempts the sovereign himself from this restriction, who may annul his own acts, as may also his successor, who enjoys the same right, having the same power and no other.³¹³

³⁰⁹ Hugo Grotius, *On the Rights of War and Peace*, 3.3.2.

³¹⁰ Hugo Grotius, *On the Rights of War and Peace*, 1.3.4-5.

³¹¹ Hugo Grotius, *On the Rights of War and Peace*, 3.3.5.

³¹² Hugo Grotius, *On the Rights of War and Peace*, 1.3.6.

³¹³ Hugo Grotius, *On the Rights of War and Peace*, 1.3.6.

The reason for a formal declaration is not for appearance sake, but rather to ensure that everyone knows that declaring war is a legal, jurisdictional action of the nation.

The reason why a declaration is necessary to constitute what is deemed, according to the law of nations, a just war, is not that which some writers assign. For they allege that it is to prevent every appearance of clandestine and treacherous dealing: an openness, which may be dignified with the name of magnanimity, rather than entitled a matter of right. On this point, we are informed that some nations have gone so far, as to settle and make known the very time and place of a general engagement. But waving all conjecture, a more satisfactory reason may be found in the necessity that it should be known for *certain*, that a war is not the *private* undertaking of bold *adventurers*, but made and sanctioned by the *public* and *sovereign* authority on both sides; so that it is attended with the effects of binding all the subjects of the respective states;--and it is accompanied also with other consequences and rights, which do not belong to wars against pirates, and to civil wars.³¹⁴

Nevertheless, defensive wars also need to be declared.

The same writers are mistaken too in the supposition that defensive wars require no declaration. For it is no less necessary to shew by way of vindication that it is a defensive war, and at the same time by public declaration to give it the character of a national and lawful war, in order to establish those rights and consequences, that have been already mentioned, and which will hereafter be more fully explained.³¹⁵

Last Resort

Grotius sees the intention to kill as an important matter. He sees the need to withhold deadly force unless it is unintentional or a last resort.

A person may accidentally, though not intentionally be killed by us in attempting to prevent him from violently obstructing us in the prosecution of a lawful right. Yet if such an accidental calamity could be foreseen, the law of charity, setting so pre-eminent a value upon the life of man, would in such a case prescribe the forbearance of our right.³¹⁶

Grotius sees that only when a grievance has not been addressed may a nation go to war.

In the same manner to justify an attack upon a sovereign power for the aggressions and debts of its subjects, a previous remonstrance, and a proper demand of justice must be made to that power. For it is only by refusing to punish the guilty, or to grant indemnity

³¹⁴ Hugo Grotius, *On the Rights of War and Peace*, 3.3.11.

³¹⁵ Hugo Grotius, *On the Rights of War and Peace*, 3.3.12.

³¹⁶ Hugo Grotius, *On the Rights of War and Peace*, 3.2.6.

to the injured, that states or sovereigns can be implicated in the misconduct of their subjects.³¹⁷

Limited Objectives

Even on an interpersonal level, Grotius sees a limit on what force should be brought to bear on an aggressor.

Thomas Aquinas, if taken in a right sense, has justly observed, that in actual self-defense no man can be said to be purposely killed. Indeed, it may some times happen that there is no other way for a person to save himself, than by designedly doing an act, by which the death of an aggressor must inevitably ensue. Yet here the death of any one was not the primary object intended, but employed as the only means of security, which the moment supplied. Still it is better for the party assaulted, if he can safely do it, to repel or disable the aggressor than to shed his blood.³¹⁸

Few people are content to proportion their revenge to the injuries they have received; bounds which in all probability the party aggrieved has exceeded, and therefore in return becomes himself the aggressor. Now the excess of retaliation cannot, any more than the fear of uncertain danger, give a colour of right to the first aggression, which may be illustrated by the case of a malefactor, who can have no right to wound or kill the officers of justice in their attempts to take him, urging as a plea that he feared the punishment would exceed the offense. The first step, which an aggressor ought to take, should be an offer of indemnity to the injured party, by the arbitration of some independent and disinterested state. And if this mediation be rejected, then his war assumes the character of a just war.³¹⁹

Grotius sees that the punishment meted out should match the level of evil done by the aggressor. This is the principle of *lex talionis*—equal and direct retribution.

But among the dictates laid down by nature, as lawful and just, and which the ancient Philosophers call the law of Rhadamanthus, the following maxim may be placed, *that it is right for every one to suffer evil proportioned to that which he has done.*³²⁰

Concerning punishment against the aggressor, Grotius writes,

The three proper ends are obtained by that kind of punishment, which some philosophers have called correction, some chastisement, and others admonition. Paulus the Lawyer, has given it the name of correction; Plato styles it a lesson of instruction, and Plutarch a medicine of the soul, reforming and healing the sufferer, while it operates as a painful remedy. For as all deliberate acts, by frequent repetition, produce a propensity, which ripens into habit, the best method of reforming vices in their earliest stage is to deprive them of their sweet savour by an infusion of subsequent pain. It is an opinion of the Platonists, repeated by Apuleius, that ‘impunity and the delay of reproof are more severe and

³¹⁷ Hugo Grotius, *On the Rights of War and Peace*, 3.3.6.

³¹⁸ Hugo Grotius, *On the Rights of War and Peace*, 2.1.4.

³¹⁹ Hugo Grotius, *On the Rights of War and Peace*, 2.1.18.

³²⁰ Hugo Grotius, *On the Rights of War and Peace*, 2.20.1.

pernicious to an offender than any punishment whatsoever,’ and, in the words of Tacitus, ‘violent disorders must be encountered with remedies proportionably strong.’³²¹

Grotius, quoting ancient pagan writers, discusses putting prisoners of war to death.

But the rights of war, for which these writers plead, could not *perfectly justify* the putting prisoners to death, but could only grant *impunity* to those who availed themselves of the barbarous custom. There is a wide difference however between actions like these, and destroying an enemy by proper means of hostility.³²²

Noncombatant Immunity

Grotius is clear that noncombatants are to be protected as best as possible. However, he makes the distinction between accomplices and noncombatants. He holds accomplices guilty at the same level as those who actually committed the acts of aggression.

This is important for us, because as we look at countries that harbor terrorists—Afghanistan, Pakistan, Iran—it becomes clear that Grotius holds them equally complicit in the acts of terrorism as those who flew the planes on September 11. The following extended quotation demonstrates Grotius’ concern for punishing accomplices.

The next topic of inquiry relates to the communication of punishment, as inflicted upon accomplices, who, in that capacity, cannot be said to be punished for the guilt of others, but for their own. And from what has been said above upon the loss sustained from injury, it may be understood who are the persons, that come under this description. For the partnership in loss, and the partnership in guilt are regulated by nearly the same principles. Yet the obligation to repair a loss does not always imply guilt, except where there has been any notorious malice, in which case every damage renders the party, who has occasioned it, liable to make reparation. So that persons ordering the commission of any wicked or hostile act, giving the requisite consent to it, supplying the aggressor with assistance, or protection, or, in any other shape, partaking of the crime, by giving counsel, commendation, or assent to his act, or when they have power to forbid the commission of such an act, by forbearing to exercise their authority, or by refusing to afford the succour, which they are bound by the law of nature, or by treaty to give to the injured party, by not using with the offender that power of dissuasion, which they have a right to do, or lastly by concealing what they ought to make known, in all these cases, such persons are punishable as accomplices, if they are convicted of that degree of malice, which constitutes a crime, and merits punishment: points which have before been discussed.³²³

In book three, he continues that thought.

³²¹ Hugo Grotius, *On the Rights of War and Peace*, 2.20.6.

³²² Hugo Grotius, *On the Rights of War and Peace*, 3.4.5.

³²³ Hugo Grotius, *On the Rights of War and Peace*, 2.21.1.

But the persons of natural-born subjects, who owe permanent allegiance to a hostile power may, according to the law of nations, be attacked, or seized, wherever they are found. For whenever, as it was said before, war is declared against any power, it is at the same time declared against all the subjects of that power. And the law of nations authorizes us to attack an enemy in every place: An opinion supported by most legal authorities: thus Marcian says “that deserters may be killed in the same manner as enemies, wherever they are found.” They may be lawfully killed there, or in their own country, in the enemy’s country, in a country belonging to no one, or on the sea. But as to the unlawfulness of killing, or violently molesting them in a neutral territory, this protection does not result from any personal privileges Of THEIR OWN, but from the rights of the SOVEREIGN Of that country. For all civil societies had an undoubted right to establish it as a standing maxim that no violence should be offered to any person within their territories, nor any punishment inflicted but by due process of law. For where tribunals retain their authority in full vigour, to try the merits of every offence, and, after impartial inquiry, to acquit the innocent, or condemn the guilty, the power of the sword must be restrained from inflicting promiscuous death.³²⁴

Concerning women and children, Grotius writes, “Age and sex are equally spared, except where the latter have departed from this privilege by taking arms, or performing the part of men.”³²⁵

I will let Grotius conclude this section with his own words.

By way of conclusion to this subject it may be observed, that all actions no way conducive to obtain a contested right, or to bring the war to a termination, but calculated merely to display the strength of either side are totally repugnant to the duties of a Christian and to the principles of humanity. So that it behoves Christian princes to prohibit all unnecessary effusion of blood, as they must render an account of their sovereign commission to him, by whose authority, and in whose stead, they bear the sword.³²⁶

Conclusions about Grotius

According to Grotius, law should be divided into divine and human. He distinguishes between the primary laws of nature and secondary laws of nature.

- Primary laws of nature are laws that completely express the will of God.
- Secondary laws of nature are rules and laws that lie within reason.

For Grotius, a war is just if three criteria are met:

- The danger faced by the nation is immediate
- The force used is necessary to adequately defend the nation’s interests, and

³²⁴ Hugo Grotius, *On the Rights of War and Peace*, 3.4.8.

³²⁵ Hugo Grotius, *On the Rights of War and Peace*, 3.11.9.

³²⁶ Hugo Grotius, *On the Rights of War and Peace*, 3.11.19.

- The use of force is proportionate to the threatened danger.³²⁷

Grotius discusses war as being a mode of protecting rights and punishing wrongs. It is a mode of judicial procedures. Although war was considered a “necessary evil,” it needed to be regulated. The “just war,” in the eyes of Grotius, is a war to obtain a right.³²⁸

Westminster Confession of Faith (1647)

In the Westminster Confession of Faith 23:2, the Divines wrote the following:

It is lawful for Christians to accept and execute the office of a magistrate when called thereunto; in the managing whereof, as they ought especially to maintain piety, justice, and peace, according to the wholesome laws of each commonwealth, so, for that end, they may lawfully, now under the New Testament, wage war upon just and necessary occasions.³²⁹

The Savoy Declaration reads similarly:

God the supreme Lord and King of all the world, hath ordained civil magistrates to be under him, over the people for his own glory and the public good; and to this end hath armed them with the power of the sword, for the defense and encouragement of them that do good, and for the punishment of evil-doers.³³⁰

As always, the Westminster Confession presents a brilliantly worked out and carefully constructed statement. We see that war may be waged upon just and necessary occasion. It defines just occasion as having the goal of “piety, justice, and peace.” The war powers are seen as an extension of the police powers of the state in Romans 13— the objective for war against an external enemy being the same as against an internal criminal. Therefore, a just war is a defensive war to protect the life and property of citizens who are under the magistrate’s jurisdiction and the civil order.

³²⁷ Hugo Grotius, *The Law of War and Peace*, 2.1 (1949) cited in Ziyad Motala and David T. Butle, *Self-Defense in International Law, the United Nations, and the Bosnian Conflict*, 57 (U. Pitt. L. Rev. 1, 10 n.75, 1995).

³²⁸ Bill Uzgalis, *Hugo Grotius* Available from <http://www.orst.edu/instruct/phl302/philosophers/grotius.html>. Internet; accessed 1 July 2002.

³²⁹ WCF 23.2; emphasis mine.

³³⁰ Savoy Declaration, 24.1. Available from http://www.reformed.org/documents/Savoy_Declaration/savoy3.html#twentyfour. Internet; accessed on 1 July 2002.

Recent Historical Developments

During the 19th and 20th centuries, several conventions, such as the Oxford Laws of War on Land (1880),³³¹ the First (1899) and Second (1907) Hague International Peace conferences, the Hague Rules of Air Warfare (1923),³³² the Geneva Convention (1947), and the United Nations Charter all sought to reduce armaments and limit the extent of the means of warfare. In the 19th century, the 1868 St. Petersburg Declaration prohibited the use of weapons that cause unnecessary suffering and forbade the practice of denying quarter to a vanquished enemy.

Although the First and Second Hague International Peace conferences failed in their intention of reducing armaments, a number of declarations and conventions regarding the laws of war were adopted. The first conference established a Permanent Court of Arbitration (the Hague Tribunal), but the proposal by the United States to establish a world court at the second congress failed. A third conference scheduled for 1916 was cancelled because of the war.

With the end of the Second World War, two basic documents resulted in increased recognition of just war theory in the international arena. The first document is the charter for the Nuremberg war crimes trials, and the second is the United Nations Charter. The Nuremberg Tribunal used basic just war categories to determine if the actions taken by the Axis powers were in accord with international law. The Nuremberg Charter restated the just war theory as set forth by Aquinas and Grotius.³³³ The Nuremberg Tribunal established that just war theory, as Grotius understood it, is universally binding, customary

³³¹ See Appendix A.

³³² See Appendix B.

³³³ See Article 6(a) and (b) of the Nuremberg Charter. Available from <http://www.deoxy.org/wc/wc-nurem.htm>. Internet; accessed 1 July 2002.

law.³³⁴ The Nuremberg trials exercised a punitive function regarding war crimes and resolved that total obedience to superiors is not an acceptable moral position.³³⁵

The Article 51 of the United Nations Charter acknowledges the right of each sovereign nation to self-defense until the Security Council can take action in order to restore and stabilize international peace and security.

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.³³⁶

Article 51 mentions the right of self-defense of a state and recognizes the operation of collective security agreements and U.N. intervention in an international conflict. It says nothing about the right of an outside state to intervene in an internal matter within another sovereign state. Article 51 states two key points concerning international relations and the rightful use of force in international disputes:

- The regulation of the use of force, and
- Collective security.

The U.N. Charter outlaws the use of military force to resolve international conflicts between nations. However, the charter does recognize the right of each nation to defend itself from an attack from an external force.³³⁷ In principle, sovereign states alone are allowed to use military violence, and they are supposed to use it only to defend them-

³³⁴ Nicholas Rostow, *The World Health Organization, The International Court of Justice, and Nuclear Weapons*, 20 *Yale Journal of International Law*, 151, 1995, 163-175.

³³⁵ I recognize that Nuremberg is a questionable authority since it was victors' justice and was exacted by the Soviet war criminals on the Nazis. Nevertheless, it remains a historical reference point in our study of just war.

³³⁶ *Charter of the United Nations and Statute of the International Court of Justice*, Articles 2.4 and 51. Available from <http://www.un.org/aboutun/charter>. Internet; accessed on 1 July 2002.

³³⁷ Ziyad Motala and David T. Butle, *Self-Defense in International Law, the United Nations, and the Bosnian Conflict*, 57 *University of Pittsburg Law Review*, 1, 10 n.75, 1995, 4.

selves against aggression or when mandated by the Security Council of the United Nations.

In 1939, the faculty of Calvin Theological Seminary prepared a lengthy, well-balanced statement on the Guidelines for Justifiable Warfare. The statement was adopted by the Christian Reformed Church at the 1939 Synod. In 1982, this statement was updated and adopted by the Synod.³³⁸

In 1983, the U.S. Catholic bishops issued a Statement entitled *The Challenge of Peace: God's Promise and Our Response*.³³⁹ This Statement condemned the savagery, horror, and perversity of war. The bishops emphasized that following Christ meant pursuing nonviolent means of national defense.

David Gushee refers to this as the “soft just war theory.”³⁴⁰ He characterizes the soft just war theory by seven components:

- A strongly articulated horror of war.
- A strong presumption against war.
- A skepticism about government claims.
- The use of just war theory as a tool for citizen discernment and prophetic critique.
- A pattern of trusting the efficacy of international treaties, multilateral strategies, and the perspectives of global peace and human rights groups and the international press.
- A quite stringent application of just war criteria.
- A claim of common ground with Christian pacifists.³⁴¹

In 1993, the U.S. Conference of Catholic Bishops set forth in its *Catechism of the Catholic Church* the Roman Catholic teaching on just war doctrine.

³³⁸ See Appendix C.

³³⁹ U.S. Conference of Catholic Bishops, *The Challenge of Peace: God's Promise and Our Response*, Available from <http://www.osjspm.org/cst/cp.htm>. Internet; accessed on 1 July 2002.

³⁴⁰ David P. Gushee, *Just War Divide: One Tradition, Two Views*, Christian Century, August 14-27, 2002, p. 26.

³⁴¹ David P. Gushee, *Just war divide*, 26.

The strict conditions for legitimate defense by military force require rigorous consideration. The gravity of such a decision makes it subject to rigorous conditions of moral legitimacy. At one and the same time:

- The damage inflicted by the aggressor on the nation or community of nations must be lasting, grave, and certain;
- All other means of putting an end to it must have been shown to be impractical or ineffective;
- There must be serious prospects of success;
- The use of arms must not produce evils and disorders graver than the evil to be eliminated. The power of modern means of destruction weighs very heavily in evaluating this condition.

These are the traditional elements enumerated in what is called the ‘just war’ doctrine. The evaluation of these conditions for moral legitimacy belongs to the prudential judgment of those who have responsibility for the common good.³⁴²

Conclusion

A detailed theology defining and severely limiting the justification of war has existed since the fifth century when Augustine, borrowing from Plato, Cicero, Clement of Alexandria, Eusebius, and Ambrose, formulated his just theory. Augustine’s theory, developed further by Thomas Aquinas, Francisco de Vitoria, and others, asserts that nations might be justified in waging war only if certain conditions are met.

1. jus ad bellum

- a. **Legitimate Authority.** Since the use of military force is the prerogative of governments, not of private individuals, a state of war must be officially declared by the highest authorities.
- b. **Just cause.** All aggression is condemned; only defensive war is legitimate.
- c. **Right intention.** The only legitimate intention is to secure a just peace for all involved. Neither revenge nor conquest nor economic gain nor ideological supremacy are justified.

2. jus in bello

- a. **Limited objectives.** If the purpose is peace, then unconditional surrender or the destruction of a nation’s economic or political institutions is an unwarranted objective.
- b. **Noncombatant immunity.** Since war is an official act of government, only those who are officially agents of government may fight, and individuals not actively contributing to the conflict including POW’s and

³⁴² U.S. Conference of Catholic Bishops, “The Just War Doctrine” from *The Catechism of the Catholic Church*, Article 2309. The complete text of the current Roman Catholic teaching on just war doctrine can be found in Appendix D.

casualties as well as civilian non-participants) should be immune from attack.³⁴³

To these five historical categories, three modern principles have been added:

- **Last resort.** War may only be entered upon when all negotiations and compromise have been tried and failed.
- **Reasonable Chance of Success:** The costs and benefits of the campaign must be weighed.
- **Proportionate means.** The weaponry and the force used should be limited to what is needed to repel the aggression and deter future attacks: to secure a just peace. Total or unlimited war is ruled out.

³⁴³ Arthur F. Holmes, *The Just War*.

Chapter 6: Conclusion

pax est tranquillitas ordinis

St. Augustine

Background

What is terrorism? Terrorism is “the systematic use of terror as a means of coercion.”³⁴⁴ Terrorists should be treated as common criminals, and the *local* civil government should be the one to deal with them.

Therefore he who resists authority has opposed the ordinance of God; and they who have opposed will receive condemnation upon themselves. For rulers are not a cause of fear for good behavior, but for evil. Do you want to have no fear of authority? Do what is good, and you will have praise from the same; for it is a minister of God to you for good. But if you do what is evil, be afraid; for it does not bear the sword for nothing; for it is a minister of God, an avenger who brings wrath upon the one who practices evil.³⁴⁵

Criminals threaten a quiet and peaceable life;³⁴⁶ however, criminals threaten the peace from “within.” However, the enemy can be either internal or external—a fellow citizen (e.g., Timothy McVey and Terry Nichols) or a foreign enemy (e.g., Osama bin Laden). We must distinguish between internal and external acts of violence. Whereas internal threats to the existence of the state are acts of sedition and insurrection, external ones are acts of war.

Criminals should live in fear of the civil government’s sword. Yet terrorists generally do not fear their own governing authorities. Often, nations do not recognize them as breaking the law; many nations are sympathetic to their cause; other nations fear that the terror might be unleashed upon them; and some nations are being run by the terrorists themselves.

³⁴⁴ *Webster Collegiate Online Dictionary*. Available from <http://www.webster.com/cgi-bin/dictionary?book=Dictionary&va=terrorism>. Internet; accessed on 1 July 2002.

³⁴⁵ Romans 13:2-4.

³⁴⁶ 1 Timothy 2:1-4.

Why is Terrorism Especially Evil?

Before we review the just war theory and apply it to the war on terrorism, we must review the heinousness of terrorism. Some speak of the “tragedy,” “disaster,” and “catastrophe” of 11 September 2001, but the Bible requires us to call the sin by its name: wanton murder. Many view the taking of innocent lives as the core sin of terrorism. Attacking non-military targets *is* an atrocious act. The just war theory tells us that, based on the principles of discrimination and noncombatant immunity, we are morally forbidden from attacking civilians. Noncombatants are not allowed to be the intended targets of violence. Our counter-response should not be to inflict serious harm on noncombatants. Rather, our goal is to prevent further harm from occurring to our nation.

To be horrified at the attack on innocent life is a valid response, but this is not the worse aspect of terrorism. The attack on Pearl Harbor by the Japanese on 7 December 1941 was a military attack on military targets authorized by the authority of a sovereign nation. The attacks on 11 September are even more wicked, not only because the primary targets were civilians but because the aggressors had no jurisdictional authority to initiate hostilities.

Yet, after the attack on Pearl Harbor, the United States did not declare a war on “surprise attacks.” Rather, war was declared on Japan.³⁴⁷ Similarly, our threat is from particular nations that are influenced and controlled by radical Islam. It is against those nation-states that the United States must declare war, and it is against the theology of Islam that the gospel must be deployed.

³⁴⁷ President George W. Bush *says* he is waging war on terrorism, but what he has actually done is topple the Afghan régime and threaten Iraq—he is attacking nations.

Review of Just War Theory

The purpose of the just war theory is to prevent war and when that fails, to limit the misery caused by war. Christian just war theory begins with a biblical understanding of the Fall and the nature of sin. It recognizes that God has established jurisdictions of authority to deal with sinful behavior. The Apostle Paul tells us in Romans 13 that civil government is instituted by God. This does not mean that all governments are godly, but God instituted them to minimize the injustice and harm occurring in this fallen world. Civil government's jurisdiction extends to the use of capital punishment. This maximum penalty is ethically required in certain well-defined circumstances.

The just war theory is broken down into two overarching themes: *jus ad bellum* and *jus in bello*. *Jus ad bellum* says that before a lawful war may be waged, there are three preconditions that must be met. There must be a just cause, a right intention, and a legitimate authority. The Christian tradition acknowledges only one just cause for war—defense of self or of others—exhibited in three modalities: a defense against an attack, punishing evil, or retaking what was previously taken.

Right intention has both a negative and positive aspect to it. In the negative, it means that the just warrior may not go to war as a vendetta or for personal glory. In the positive sense, right intention means that war is to bring peace—a *tranquillitas ordinis*.³⁴⁸ The just warrior has the responsibility of pursuing justice even to his own hurt. This is necessary because he is acting as the instrument of God to bring justice and order to a fallen world.

³⁴⁸ Augustine, *De Civitate Dei*, 20.13

The historical position is that God gives the state the power of the sword to protect its citizens. This extends to the protection against acts of aggression and terrorism, both internal and external. War in a fallen world is sometimes necessary as the extension of the police powers of the state. Only the state, lawfully invested with the power of the sword, may put to death.

However, our focus is on the *jus ad bellum* criterion of legitimate political authority. Beginning with the Apostle Paul in Romans 13 and continuing through the entire historical development of Christian just war theory, including Augustine, Aquinas, and Calvin, there is a universal emphasis on the necessity of legitimate governmental authority to go to war. When addressing the theological issue of just war, both Augustine and Aquinas cited Romans 13 for support, and both began with the issue of legitimate authority.

Augustine saw no disparity between a police action and the projection of force to other lands. For Augustine, the most compelling justification for using force was to protect the innocent; and the central issue was the difference between public and private use of force. Force belongs to those who are in civil authority and who have the responsibility for upholding the public good.³⁴⁹ Aquinas agreed with Augustine.

When Thomas Aquinas discusses just war in the *Summa Theologiae* (II-II.40), he does not do so in the section on justice, but rather in the section on charity—specifically, the love of God. He makes it clear that war is not a vice that is opposed to the love of God. On the contrary, war-making, when just, can be a form of love.³⁵⁰

The right authority is the nation-state as recognized by other nation-states. This is because warfare is a jurisdictional issue. It is not the prerogative of private individuals to take up arms and declare war. That right belongs to the lawful authority of the state alone.

³⁴⁹ James Turner Johnson, *Authority and Intention*. Available from http://findarticles.com/cf_0/m1058/31_118/80680206/print.jhtml. Internet. Accessed on 1 July 2002.

³⁵⁰ Darrell Cole, *Good Wars*.

The insidious nature of terrorism is not only that it indiscriminately targets non-combatants, but that it also circumvents the God-ordained institution for dealing with civil matters: the state. This direct assault on the state is ultimately the first step to its demise: disorder, lawlessness, chaos, and anarchy.

In discussing Aquinas' dealings with private war, Johnson writes:

But Thomas also brought into focus a specific concern of his own time, one raised today by the phenomenon of terrorism: the obligation of every sovereign authority to curb and punish lawless people who strike at the order, justice, and peace that are the core purpose of political community. Terrorism by its nature aims to undermine and erode these goods and thus attacks all people who benefit from them. While the tradition has allowed for the possibility of a war between two states both seeming, because of the complexity of the issues involved, to be just, the kind of violence we today call terrorism is evil in its very nature, because it attacks the foundations of political community itself. The authority to use force to curb and punish terrorism is thus the same authority that seeks to protect the goods of the political order as such. There is no justice in terrorism, only injustice.³⁵¹

This harkens back to Augustine's call for *tranquillitas ordinis*. By this, Augustine does not mean the eschatological peace of the Kingdom of God. Rather, he means concord, reconciliation, and common accord. English has an idiomatic expression: *everything is in order*—everything is fine. Terrorism seeks to remove the *order* in life and bring about *disorder*, chaos.

Application of Just War Theory to Terrorism

Theological Considerations

Darrel Cole points out that there are two main reasons why Christians today wish to disown the just war tradition's acceptance of warfare as a potential good: pacifism and humanism.

First, there is the influence of Christian pacifism. The complaint from this quarter is that one cannot follow Jesus—and thus cannot be a Christian in the fullest sense (if in any sense at all)—unless one rejects all recourse to the use of force. Christians on this view should follow the lead of the early Church, which, we are told, rejected the use of force,

³⁵¹ James Turner Johnson, *In Response to Terror*. Available from <http://www.leaderu.com/ftissues/ft9902/opinion/johnson.html>. Internet; accessed on 1 July 2002.

at least until the “Constantinian Fall” that supposedly ushered in the age of Christian imperialism. The second reason many contemporary Christians have rejected recourse to violence is that liberal–humanist ideas have convinced them that war is something inhuman, unreasoned, and unpurposeful. It is thus also something inherently ignoble, unworthy of human nature, and out of step with contemporary mores and the direction of history.³⁵²

As discussed in chapter 5, the classical pacifist position stated that it was sinful for a *Christian* to hold political office. Even many Anabaptists did not deny that the state had the right to use capital punishment. Today, most pacifists, however, have adopted a humanistic and modernistic theology. Many categorically deny even the state’s use of the sword against murderers.

Nevertheless, Christians are to accept just wars because these are acts of love toward God and toward our neighbor. God desires to restrain sin within His creation, and those who wage just wars are His instruments in that process. Recall that the first use of the Law of God is to restrain sin in unredeemed men.³⁵³

The first purpose of the Law, accordingly, is to restrain the wicked. The devil gets people into all kinds of scrapes. Therefore God instituted governments, parents, laws, restrictions, and civil ordinances. At least they help to tie the devil’s hands so that he does not rage up and down the earth. This civil restraint by the Law is intended by God for the preservation of all things, particularly for the good of the Gospel that it should not be hindered too much by the tumult of the wicked.³⁵⁴

The first use of the law is, by means of its fearful denunciations and the consequent dread of punishment, to curb those who, unless forced, have no regard for rectitude and justice. Such persons are curbed, not because their mind is inwardly moved and affected, but because, as if a bridle were laid upon them, they refrain their hands from external acts, and internally check the depravity which would otherwise petulantly burst forth.³⁵⁵

³⁵² Darrell Cole, *Can a War be Just?* Available from <http://www.goodnewsmag.org/magazine/6NovDec/nd01cole.html>. Internet; accessed on 1 July 2002.

³⁵³ Reformed thought has summarized the proper uses of the law into three specific functions: first, it’s “political use” was to restrain sin and ungodly behavior within the unbeliever in a society; second, it drives the convicted sinner to Christ; and third, it provides a pattern of sanctification for the regenerated believer.

³⁵⁴ Martin Luther, *Commentary on Galatians*, 3:19. Available from http://www.bibleteacher.org/luthercom_3b.htm. Internet; accessed on 1 July 2002.

³⁵⁵ John Calvin, *Institutes*, 2.7.10.

The Fall has caused much human suffering and misery, but that does not provide a rationale for allowing innocent people to be murdered when it is *both* within our jurisdiction *and* authority to stop it. Although the state is not God, it is His servant. It has been charged by God to protect the lives and property of its citizens and to enforce justice. It may only use its power of compulsion—violence and vengeance—where God has given it jurisdiction. For civil authorities not to respond to the attacks of 11 September would be to flee their diaconal responsibility, for they are accountable to God for the protection of the innocent.³⁵⁶

The Lord requires us to call upon and boast in His name and not the name of some other idolatrous god. “We will sing for joy over your victory, and in the name of our God we will set up our banners.”³⁵⁷ To go into battle under the banner of a nameless god is idolatry.³⁵⁸ Even if He were to deliver Saddam Hussein or al-Qaeda into our hands, that may ultimately bring more leanness to our souls: “So He gave them their request, but sent a wasting disease among them.”³⁵⁹

The spiritually emaciated state of our nation is well demonstrated by our worship following 11 September. Instead of turning to the Living God, we gathered in the National Cathedral, held a polytheistic worship service, and took pride that Muslim, Jew, Christian, Sikh, Buddhist, and Hindu could gather together, worship, and pray to a common

³⁵⁶ Romans 13:4—θεοῦ γὰρ διάκονος ἐστὶν σοὶ εἰς τὸ ἀγαθόν

³⁵⁷ Psalm 20:5

³⁵⁸ Douglas Wilson, *Psalm 20*, Christ Church, 24 November 2002.

³⁵⁹ Psalm 106:15. The larger discussion in Psalm 106:13-43 applies to the current state of Christ’s church today as it did to the nation of Israel; and the ending (verses 44-48), showing God’s mercy to the Bride of Christ, also is applicable to the church today.

god.³⁶⁰ Our nation has slipped into idolatry and polytheism in the name of tolerance and acceptance, tolerating everything except the truth. Apart from repentance, we will find no blessing for our nation.³⁶¹ The Lord will not share His glory with another. “I am the Lord, that is My name; I will not give My glory to another, nor My praise to graven images.”³⁶² The response of the church must be a comprehensive turning to the Triune God in worship.

Application to Terrorism

Although terrorists may not have a lawful “nation-state” as their authority, the just war theory still applies to the case of terrorism. The vast majority of Christian thought on just war predates the 17th century rise of the modern nation-state and does not depend upon the existence of nations to be applied. Augustine, Aquinas, and Calvin all argued that one need only identify the competent authority; however, that authority does not need to be a sovereign nation-state.³⁶³

The U.S. Constitution grants the following powers to Congress:

- To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations.³⁶⁴
- To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water.³⁶⁵

³⁶⁰ See the National Cathedral’s *National Day of Prayer and Remembrance (Friday, September 14, 2001)*, available from <http://www.cathedral.org/cathedral/programs/wtc9.11/wtc.shtml>. Internet; accessed on 1 July 2002. See especially the greeting by the Right Reverend Jane Holmes Dixon, Bishop of the Episcopal Diocese of Washington, available at <http://www.cathedral.org/cathedral/programs/wtc9.11/bishopdixon.shtml>.

³⁶¹ See Appendix E: *Confederation of Reformed Evangelicals Memorial Concerning the Events of 9/11*.

³⁶² Isaiah 42:8

³⁶³ See my Chapter 6 on Augustine’s view of legitimate authority.

³⁶⁴ *United States Constitution*, Article 1, Section 8, Clause 10, Available from <http://www.senate.gov/vi/Information%20Pages/USConstit.html>. Internet; accessed on 1 July 2002.

³⁶⁵ *Ibid.*, Article 1, Section 8, Clause 11.

The terrorist actions against the U.S. fall under at least these two constitutional provisions. Terrorism most nearly mimics the lawlessness of piracy, and the law against piracy should rightfully be extended and applied to the war on terrorism. As a historical note, the first exercise of U.S. military power beyond its borders was the repression of the Barbary Pirates by using force for “international order” considerations.³⁶⁶

jus ad bellum

Countries harboring terrorists need to understand the seriousness of terrorism within their borders. As sovereign powers, they have jurisdiction over the terrorist groups within their borders. They must catch, prosecute, and punish the terrorists themselves, or they must extradite them to the offended nation for trial and sentencing. If, as in the case of Afghanistan, the host country refuses these requirements, then it is colluding with the enemy. Not prosecuting the acts of aggression being perpetrated from within their borders makes it complicit with the terrorists and subject to acts of war.

There must also be a righteous intent and legitimate motive for going to war. The magistrate is an “avenger” of God, administering God’s own vengeance.³⁶⁷ Revenge and vendetta as personal motivations are not worthy or morally sufficient cause for our military efforts. A just cause also may not be feigned as an opportunity to prosecute a war whose aim is unjust, e.g., securing Middle East oil fields, invigorating the economy, keeping the price of gas low, vengeance, etc. Our goal must be a just peace.

³⁶⁶ Martin L. Cook, *Moral Challenges*. Available from http://findarticles.com/cf_0/m1058/31_118/80680206/print.jhtml. Internet; accessed on 1 July 2002.

³⁶⁷ Romans 13:4.

jus in bello

The just war tradition is not ignorant of the effects of war. War involves killing, and noncombatants will inevitably suffer. The *jus in bello* requirement of proportionality means that an all-out, non-discriminatory war of annihilation may not be fought. However, there is a tension between the care owed to civilians and the risk soldiers are expected to take in order to accomplish a military mission.³⁶⁸ When commanders determine the level of force to apply, they evaluate how much force is allowable, not how little is possible. When a commander resolves the tension between due care and due risk, he will choose to minimize the risk; he will use that amount of allowable force necessary to preserve his men's lives without violating *jus in bello*.³⁶⁹ According to the *Law of War*, soldiers are obligated to ensure that,

Loss of life and damage to property incidental to attacks must not be excessive in relation to the concrete and direct military advantage expected to be gained. Those who plan or decide upon an attack, therefore, must take all reasonable steps to ensure not only that the objectives are identified as military objectives or defended places ...but also that these objectives may be attacked without probable losses in lives and damage to property disproportionate to the military advantage anticipated.³⁷⁰

The *Principle of Double Effect* is attributed to Aquinas and is frequently used to determine when an action that has two possible effects—one bad the other good—may lawfully be performed.³⁷¹ Walzer summarizes the four conditions that must be met in order for acts with evil consequences, like the killing of civilians, to be just:

1. The act is good in itself or at least indifferent; it is a legitimate act of war.

³⁶⁸ James M. Dubik, "Human Rights, Command Responsibility, and Walzer's Just War Theory," *Philosophy and Public Affairs*, Vol. 11, No. 4, 1982, p. 355.

³⁶⁹ Tony Pfaff, *Peacekeeping and the Just War Tradition*. Available from <http://carlisle-www.army.mil/usassi/ssipubs/pubs2000/justwar/justwar.pdf>. Internet; accessed on 1 July 2002.

³⁷⁰ *Law of Land Warfare*, Chapter 2 (Hostilities), Section 4 (Bombardments, Assaults, And Sieges), Paragraph 41 (Unnecessary Killing and Devastation). Available from <http://www.adtdl.army.mil/cgi-bin/atdl.dll/fm/27-10/Ch2.htm>. Internet; accessed on 1 July 2002.

³⁷¹ Thomas Aquinas, *Summa*, 2.64.7.

2. The direct effect is morally acceptable—the destruction of military supplies, for example, or the killing of enemy soldiers.
3. The intention of the actor is good. He aims only at the acceptable effect; the evil effect is not one of his ends, nor is it a means to his ends.
4. The good effect is sufficiently good to compensate for the evil effect.³⁷²

The need to minimize collateral damage does not mean that we must put our soldiers in jeopardy, risking the outcome of the military operation in order to avoid a single civilian casualty. The use of “smart-bombs” and other discriminating weapons, when used with good military intelligence, can provide discrimination while simultaneously minimizing the risks to our own personnel. However, a moral response to terrorism is not limited to a few clear-cut military reprisals. For instance, we have also seen the Bush administration’s appropriate concern for the welfare of the innocent demonstrated by the food-drops and medical aid to the starving Afghan people.

Terrorists shield themselves among civilian populations to avoid being targeted. They know that the U.S. is loath to cause civilian losses. We see this scenario in Iraq’s dual-use facilities—facilities that serve both a civilian and a military function; we have seen it in the past with the tactics of the Viet Cong and their use of guerrilla warfare; and we see it currently in the tactics embraced by al-Qaeda.

The discrimination principle categorically forbids deliberately targeting innocent bystanders, but it does not forbid every act that might harm them unintentionally. It’s also important to remember that the issue isn’t who wears a uniform, but who shares responsibility for the evil we are trying to end. Government facilities that direct or support the perpetrators of unjust violence may certainly be targeted, even if the perpetrators themselves are somewhere else. Of course we are obligated to do what we can to reduce the risk of collateral harm, so indiscriminate bombing is out. The proportionality principle also kicks in, barring us from deeds that bring about more harm than they prevent.³⁷³

³⁷² Michael Walzer, *Just and Unjust Wars*, p. 153. Note: Of these four conditions, the first two are general rules of morality; the third and fourth conditions pertain specifically to the principle of the double effect.

³⁷³ J. Budziszewski, *New War, Old Principles: The Attack On America Demands A Forceful Response, But We Must Call For A Just War*. Available from <http://www.goodnewsmag.org/news/090301Budziszewski.html>. Internet; accessed on 1 July 2002.

Discrimination forbids *purposefully* targeting noncombatants, but it does not mean that a just war may not pursue methods that might *unintentionally* harm them. The *jus in bello* requirement does not mean zero collateral damage. Requirements for zero collateral damage would absolutely deter the prosecution of the enemy, making success unlikely and the war ultimately unjust.³⁷⁴

Our troops should not be put in danger without the greatest of reasons, but there are consequences to protecting troops at the cost of the opponent's civilian population. We must be careful to distinguish between unintended consequences, which occur in spite of due care, and dubious actions.³⁷⁵

General Considerations

In this “war against terrorism,” we are indeed talking about *war*. As per the just war criteria, the United States’ “lawful authority” to declare war is the Congress.³⁷⁶ Whether a “régime change” in Iraq or a “war on terrorism” against al-Qaeda, that war may only be declared lawfully by Congress. Any attempt to do this without an express declaration of war by Congress is therefore unconstitutional. The President of the United States does not have the constitutional right to declare war,³⁷⁷ and neither does the United Nations. Only

³⁷⁴ This argument follows from the contemporary just war requirement that includes *likely success*. There can be no *guarantee* of zero collateral damage.

³⁷⁵ There are insurmountable difficulties in holding to the rule of zero noncombatant casualties in an age of terrorism, especially when a civilian might be a suicide bomber.

³⁷⁶ *United States Constitution*, Article 1, Section 8, Clause 11.

³⁷⁷ The Constitution does permit the President limited military action without such a declaration (e.g., dealing with the Barbary pirates), but to overthrow the government of another nation without a declaration of war is unconstitutional and therefore unjust.

Congress declares war. To engage in an undeclared war makes that “police action,” “intervention,” or “conflict” unjust.³⁷⁸

The Department of Defense needs to realign its thinking from traditional warfare models to a new paradigm. We were unsuccessful in fighting the Viet Cong’s tactics by using conventional methods; we will be less successful against professional, well-trained, well-funded terrorists using similar strategies.

The President of the United States needs to recall the words of Psalm 20:7: “Some boast in chariots, and some in horses; but we will boast in the name of the Lord, our God.” The United States need to know that they cannot trust and boast in their military prowess—jets, ships, smart bombs, and tomahawk missiles. In the exodus, Israel left Egypt (at that time the mightiest nation on earth) in total chaos and disarray; and Israel plundered them on their way out.³⁷⁹ If the Lord desires to deliver the United States into the hands of the Iraqis, He is able to do it. We may not take hope in our military might. Our hope must lie in the Lord alone.

Violence on the scale of 11 September does demand a just response. Terrorist acts are particularly evil because they deliberately target defenseless civilians. The human source of this evil must be routed; otherwise, we can expect to have similar attacks in the future. However, military force is not the only instrument at our disposal. We must simultaneously pursue alternative methods as well: tracking down money transfers; freezing bank accounts; removing terrorist support; destroying drug crops; attacking command, control, and communication networks; disrupting computer infrastructures; gathering intelligence

³⁷⁸ The United States have participated in many undeclared wars: Korea, Viet Nam, Persian Gulf, and Somalia, to name a few of the larger “conflicts.”

³⁷⁹ Exodus 12:36; cf. Exodus 3:22.

data about terrorists and terrorist organizations, and sharing that information with other countries; etc.

Finally, a few cautions are in order.

- Just because the Saudis have the largest oil fields in the world does not mean they are or should be our allies.
- We need to be on guard against marginal or unjust wars.
- We need to consider our nation's activities in the world.
- We must never embrace intrinsic evil such as intentionally targeting noncombatants.
- Our just war needs to lead to a just peace, for the end of war is peace.
- We must place limits on the means of war. With each advance in technological weaponry—nuclear, chemical, biological—moral restraint must be maintained. At the center of this discussion is the avoidance of all-out war that targets an entire society—both combatants and civilians. Indiscriminate bombing campaigns threaten innocent civilians. The balance of saving civilians, while not striking civilians, is *the* moral problem facing a war on terrorism.
- God demands holiness of us. Even if an unjust country were to use unrighteous means against us (e.g., chemical weapons), this does not justify retaliating with unjust means. “Murder remains murder, even when the murdered man might justly have been executed.”³⁸⁰ We must not resort to al-Qaeda techniques of terror.
- We are called to pursue the war on terrorism both effectively and ethically by applying the Exodus 21 requirement of *lex talionis*: just and proportional punishment. This means that, under the *jus in bello* requirements, there are many options: economic embargoes (similar to what has been done to Iraq), import-export restrictions (such as preventing uranium and plutonium from reaching Iraq), and military action; but even under the maximum retaliation, there is no “carpet bombing” of the host country's cities. The response needs to be proportional.

Final Conclusions

The Christian who fails to use force to aid his neighbor when prudence dictates that force is the best way to render that aid is an uncharitable Christian. Hence, Christians who willingly and knowingly refuse to engage in a just war do a vicious thing: they fail to show love toward their neighbor as well as toward God.³⁸¹

There is no political solution to the sin problem. We wage war because of sin. Sin permeates every aspect of our personal and corporate life; sin corrupts our interpersonal as well as international relations. Ultimately, war is a consequence of the Fall and of our

³⁸⁰ Ibid.

³⁸¹ Darrell Cole, *Good Wars*.

sinful nature, and sin can only be remedied by the Gospel of Christ. Even a just war will not end all wars.

Sometimes violence must be used to enforce justice in this world, but the enforcement of justice is not the same as justice itself. The fact that force is successfully used does not establish the rightness of a cause. Nevertheless, the right cause does need to be enforced. When applying just war principles to terrorism, it is important that we not respond blow-by-blow to each terrorist attack. A defensive, preventive military strategy needs to be proposed. It is both moral and just to use military action to prevent further terrorist acts.

However well the above methods suppress the physical aspects of the terrorist war machine, it does not deal with the root issue: sin. Our military may attack the al-Qaeda terrorist organization, but the Muslim theology that undergirds the attacks can only be broken by the Gospel. Since only the Holy Spirit can change the hearts of wicked men, this means that we cannot trust warfare to do anything other than restrain the external sinful behavior. In order to deal with the human condition and the sinful nature, the Church of Jesus Christ aggressively needs to export the gospel to the Middle East. Only by taking the gospel of the Prince of Peace to the Muslim world will we all know peace.

However, military action might actually promote the gospel. Islam is a religion of power and strength. A demonstration of its powerlessness might actually have an evangelistic effect. The Islamic world so shelters and protects Muslims from outside influences that military action might puncture that political and cultural shield, allowing the way for evangelism to occur.³⁸²

³⁸² I appreciate Dr. Peter Leithart's input concerning the catalyst that military action may be in promoting the gospel to the Muslim world.

The Christian just war response needs to shape the policies and win the debate in the public arena. Only the Christian perspective has the moral foundation to make godly political and military recommendations. All of the options and ramifications concerning a war on terrorism need to be considered in advance so that we are not responding in retrospect to acts of aggression. That means the U.S. needs to consider a just response in the event a terrorist organization launches a small pox attack; an anthrax attack; a “dirty” bomb; a biological-chemical weapon; or even a nuclear bomb. Each of these scenarios needs to be thought out in advance with a Christian just war response already in the public debate.

Appendix A: The Laws of War on Land

Oxford, 9 September 1880³⁸³

The Laws of War on Land. Oxford, 9 September 1880 Preface War holds a great place in history, and it is not to be supposed that men will soon give it up -- in spite of the protests which it arouses and the horror which it inspires -- because it appears to be the only possible issue of disputes which threaten the existence of States, their liberty, their vital interests. But the gradual improvement in customs should be reflected in the method of conducting war. It is worthy of civilized nations to seek, as has been well said (Baron Jomini), "to restrain the destructive force of war, while recognizing its inexorable necessities."

This problem is not easy of solution; however, some points have already been solved, and very recently the draft of Declaration of Brussels has been a solemn pronouncement of the good intentions of governments in this connection. It may be said that independently of the international laws existing on this subject, there are to-day certain principles of justice which guide the public conscience, which are manifested even by general customs, but which it would be well to fix and make obligatory. That is what the Conference of Brussels attempted, at the suggestion of His Majesty the Emperor of Russia, and it is what the Institute of International Law, in its turn, is trying to-day to contribute. The Institute attempts this although the governments have not ratified the draft issued by the Conference at Brussels, because since 1874 ideas, aided by reflection and experience, have had time to mature, and because it seems less difficult than it did then to trace rules which would be acceptable to all peoples.

The Institute, too, does not propose an international treaty, which might perhaps be premature or at least very difficult to obtain; but, being bound by its by-laws to work, among other things, for the observation of the laws of war, it believes it is fulfilling a duty in offering to the governments a 'Manual' suitable as the basis for national legislation in each State, and in accord with both the progress of juridical science and the needs of civilized armies.

Rash and extreme rules will not, furthermore, be found therein. The Institute has not sought innovations in drawing up the 'Manual'; it has contented itself with stating clearly and codifying the accepted ideas of our age so far as this has appeared allowable and practicable.

By so doing, it believes it is rendering a service to military men themselves. In fact so long as the demands of opinion remain indeterminate, belligerents are exposed to painful uncertainty and to endless accusations. A positive set of rules, on the contrary, if they are judicious, serves the interests of belligerents and is far from hindering them, since by preventing the unchaining of passion and savage instincts -- which battle always awakens, as much as it awakens courage and manly virtues, -- it strengthens the discipline which is the strength of armies; it also ennobles their patriotic mission in the eyes of the soldiers by keeping them within the limits of respect due to the rights of humanity.

³⁸³ Washburn University Archive of Foreign and International Treaties
<http://lawlib.wuacc.edu/forint/forintmain.html>

But in order to attain this end it is not sufficient for sovereigns to promulgate new laws. It is essential, too, that they make these laws known among all people, so that when a war is declared, the men called upon to take up arms to defend the causes of the belligerent States, may be thoroughly impregnated with the special rights and duties attached to the execution of such a command.

The Institute, with a view to assisting the authorities in accomplishing this part of their task, has given its work a popular form, attaching thereto statements of the reasons therefore, from which the text of a law may be easily secured when desired.

PART I : GENERAL PRINCIPLES

Article 1. The state of war does not admit of acts of violence, save between the armed forces of belligerent States.

Persons not forming part of a belligerent armed force should abstain from such acts.

‘This rule implies a distinction between the individuals who compose the “armed force” of a State and its other ‘ressortissants’. A definition of the term “armed force” is, therefore, necessary.’

Art. 2. The armed force of a State includes:

1. The army properly so called, including the militia;
2. The national guards, landsturm, free corps, and other bodies which fulfill the three following conditions:
 - (a) That they are under the direction of a responsible chief;
 - (b) That they must have a uniform, or a fixed distinctive emblem recognizable at a distance, and worn by individuals composing such corps;
 - (c) That they carry arms openly;
3. The crews of men-of-war and other military boats;
4. The inhabitants of non-occupied territory, who, on the approach of the enemy, take up arms spontaneously and openly to resist the invading troops, even if they have not had time to organize themselves.

Art. 3. Every belligerent armed force is bound to conform to the laws of war.

‘The only legitimate end that States may have in war being to weaken the military strength of the enemy’ (Declaration of St. Petersburg, 1868),’

Art. 4. The laws of war do not recognize in belligerents an unlimited liberty as to the means of injuring the enemy.

They are to abstain especially from all needless severity, as well as from all perfidious, unjust, or tyrannical acts.

Art. 5. Military conventions made between belligerents during the continuance of war, such as armistices and capitulations, must be scrupulously observed and respected.

Art. 6. No invaded territory is regarded as conquered until the end of the war; until that time the occupant exercises, in such territory, only a ‘de facto’ power, essentially provisional in character.

PART II : APPLICATION OF GENERAL PRINCIPLES

I. HOSTILITIES

A. Rules of conduct with regard to individuals

(a) Inoffensive populations

‘The contest being carried on by “armed forces” only (Article 1),’

Art. 7. It is forbidden to maltreat inoffensive populations.

(b) Means of injuring the enemy

‘As the struggle must be honorable (Article 4),’

Art. 8. It is forbidden:

(a) To make use of poison, in any form whatever;

(b) To make treacherous attempts upon the life of an enemy; as, for example, by keeping assassins in pay or by feigning to surrender;

(c) To attack an enemy while concealing the distinctive signs of an armed force;

(d) To make improper use of the national flag, military insignia or uniform of the enemy, of the flag of truce and of the protective signs prescribed by the ‘Geneva Convention’ (Articles 17 and 40).

‘As needless severity should be avoided (Article 4),’

Art. 9. It is forbidden:

(a) To employ arms, projectiles, or materials of any kind calculated to cause superfluous suffering, or to aggravate wounds - notably projectiles of less weight than four hundred grams which are explosive or are charged with fulminating or inflammable substances’ (Declaration of St. Petersburg);’

(b) To injure or kill an enemy who has surrendered at discretion or is disabled, and to declare in advance that quarter will not be given, even by those who do not ask it for themselves.

(c) The sick and wounded, and the sanitary service

‘The following provisions (Articles 10 to 18), drawn from the ‘Geneva Convention,’ exempt the sick and wounded, and the personnel of the sanitary service, from many of the needless hardships to which they were formerly exposed:’

Art. 10. Wounded or sick soldiers should be brought in and cared for, to whatever nation they belong.

Art. 11. Commanders in chief have power to deliver immediately to the enemy outposts hostile soldiers who have been wounded in an engagement, when circumstances permit and with the consent of both parties.

Art. 12. Evacuations, together with the persons under whose direction they take place, shall be protected by neutrality.

Art. 13. Persons employed in hospitals and ambulances -- including the staff for superintendence, medical service, administration and transport of wounded, as well as the chaplains, and the members and agents of relief associations which are duly authorized to assist the regular sanitary staff -- are considered as neutral while so employed, and so long as there remain any wounded to bring in or to succor.

Art. 14. The personnel designated in the preceding article should continue, after occupation by the enemy, to tend, according to their needs, the sick and wounded in the ambulance or hospital which it serves.

Art. 15. When such personnel requests to withdraw, the commander of the occupying troops sets the time of departure, which however he can only delay for a short time in case of military necessity.

Art. 16. Measures should be taken to assure, if possible, to neutralized persons who have fallen into the hands of the enemy, the enjoyment of fitting maintenance.

Art. 17. The neutralized sanitary staff should wear a white arm-badge with a red cross, but the delivery thereof belongs exclusively to the military authority.

Art. 18. The generals of the belligerent Powers should appeal to the humanity of the inhabitants, and should endeavor to induce them to assist the wounded by pointing out to them the advantages that will result to themselves from so doing (Articles 36 and 59). They should regard as inviolable those who respond to this appeal.

(d) The dead

Art. 19. It is forbidden to rob or mutilate the dead lying on the field of battle.

Art. 20. The dead should never be buried until all articles on them which may serve to fix their identity, such as pocket-books, numbers, etc., shall have been collected.

The articles thus collected from the dead of the enemy are transmitted to its army or government.

(e) Who may be made prisoners of war

Art. 21. Individuals who form a part of the belligerent armed force, if they fall into the hands of the enemy, are to be treated as prisoners of war, in conformity with Articles 61 et seq.

The same rule applies to messengers openly carrying official dispatches, and to civil aeronauts charged with observing the enemy, or with the maintenance of communications between the various parts of the army or territory.

Art. 22. Individuals who accompany an army, but who are not a part of the regular armed force of the State, such as correspondents, traders, sutlers, etc., and who fall into the hands of the enemy, may be detained for such length of time only as is warranted by strict military necessity.

(f) Spies

Art. 23. Individuals captured as spies cannot demand to be treated as prisoners of war.

‘But’

Art. 24. Individuals may not be regarded as spies, who, belonging to the armed force of either belligerent, have penetrated, without disguise, into the zone of operations of the enemy, -- nor bearers of official dispatches, carrying out their mission openly, nor aeronauts (Article 21).

‘In order to avoid the abuses to which accusations of espionage too often give rise in war it is important to assert emphatically that’

Art. 25. No person charged with espionage shall be punished until the judicial authority shall have pronounced judgment.

‘Moreover, it is admitted that’

Art. 26. A spy who succeeds in quitting the territory occupied by the enemy incurs no responsibility for his previous acts, should he afterwards fall into the hands of that enemy.

(g) Parlementaires

Art. 27. A person is regarded as a parlementaire and has a right to inviolability who has been authorized by one of the belligerents to enter into communication with the other, and who advances bearing a white flag.

Art. 28. He may be accompanied by a bugler or a drummer, by a colour-bearer, and, if need be, by a guide and interpreter, who also are entitled to inviolability.

‘The necessity of this prerogative is evident. It is moreover, frequently exercised in the interest of humanity. But it must not be injurious to the adverse party. This is why’

Art. 29. The commander to whom a parlementaire is sent is not in all cases obliged to receive him.

‘Besides,’

Art. 30. The commander who receives a parlementaire has a right to take all the necessary steps to prevent the presence of the enemy within his lines from being prejudicial to him.

‘The parlementaire and those who accompany him should behave fairly towards the enemy receiving them (Article 4).’

Art. 31. If a parlementaire abuse the trust reposed in him he may be temporarily detained, and, if it be proved that he has taken advantage of his privileged position to abet a treasonable act, he forfeits his right to inviolability.

B. Rules of conduct with regard to things

(a) Means of injuring -- Bombardment

‘Certain precautions are made necessary by the rule that a belligerent must abstain from useless severity (Article 4). In accordance with this principle’

Art. 32. It is forbidden:

(a) To pillage, even towns taken by assault;

(b) To destroy public or private property, if this destruction is not demanded by an imperative necessity of war;

(c) To attack and to bombard undefended places.

‘If it is incontestable that belligerents have the right to resort to bombardment against fortresses and other places in which the enemy is entrenched, considerations of humanity require that this means of coercion be surrounded with certain modifying influences which will restrict as far as possible the effects to the hostile armed force and its means of defense. This is why’

Art. 33. The commander of an attacking force, save in cases of open assault, shall, before undertaking a bombardment, make every due effort to give notice thereof to the local authorities.

Art. 34. In case of bombardment all necessary steps must be taken to spare, if it can be done, buildings dedicated to religion, art, science and charitable purposes, hospitals and places where the sick and wounded are gathered on the condition that they are not being utilized at the time, directly or indirectly, for defense.

It is the duty of the besieged to indicate the presence of such buildings by visible signs notified to the assailant beforehand.

(b) Sanitary material

‘The arrangements for the relief of the wounded, which are made the subject of Articles 10 let seq., would be inadequate were not sanitary establishments also granted special protection. Hence, in accordance with the ‘Geneva Convention,’

Art. 35. Ambulances and hospitals for the use of armies are recognized as neutral and should, as such, be protected and respected by belligerents, so long as any sick or wounded are therein.

Art. 36. The same rule applies to private buildings, or parts of buildings, in which sick or wounded are gathered and cared for.

‘Nevertheless,’

Art. 37. The neutrality of hospitals and ambulances ceases if they are guarded by a military force; this does not preclude the presence of police guard.

Art. 38. As the equipment of military hospitals remains subject to the laws of war, persons attached to such hospitals cannot, in withdrawing, carry away any articles but such as are their private property. Ambulances, on the contrary, retain all their equipment.

Art. 39. In the circumstances referred to in the above paragraph, the term “ambulance” is applied to field hospitals and other temporary establishments which follow the troops on the field of battle to receive the sick and wounded.

Art. 40. A distinctive and uniform flag is adopted for ambulances, hospitals, and evacuations. It bears a red cross on a white ground. It must always be accompanied by the national flag.

II. OCCUPIED TERRITORY

A. Definition

Art. 41. Territory is regarded as occupied when, as the consequence of invasion by hostile forces, the State to which it belongs has ceased, in fact, to exercise its ordinary authority therein, and the invading State is alone in a position to maintain order there. The limits within which this state of affairs exists determine the extent and duration of the occupation.

B. Rules of conduct with respect to persons

‘In consideration of the new relations which arise from the provisional change of government (Article 6),’

Art. 42. It is the duty of the occupying military authority to inform the inhabitants at the earliest practicable moment, of the powers that it exercises, as well as of the local extent of the occupation.

Art. 43. The occupant should take all due and needful measures to restore and ensure public order and public safety.

‘To that end’

Art. 44. The occupant should maintain the laws which were in force in the country in time of peace, and should not modify, suspend, or replace them, unless necessary.

Art. 45. The civil functionaries and employees of every class who consent to continue to perform their duties are under the protection of the occupant.

They may always be dismissed, and they always have the right to resign their places.

They should not be summarily punished unless they fail to fulfill obligations accepted by them, and should be handed over to justice only if they violate these obligations.

Art. 46. In case of urgency, the occupant may demand the cooperation of the inhabitants, in order to provide for the necessities of local administration.

‘As occupation does not entail upon the inhabitants a change of nationality,’

Art. 47. The population of the invaded district cannot be compelled to swear allegiance to the hostile Power; but inhabitants who commit acts of hostility against the occupant are punishable (Article 1).

Art. 48. The inhabitants of an occupied territory who do not submit to the orders of the occupant may be compelled to do so.

The occupant, however, cannot compel the inhabitants to assist him in his works of attack or defense, or to take part in military operations against their own country (Article 4).

‘Besides,’

Art. 49. Family honour and rights, the lives of individuals, as well as their religious convictions and practice, must be respected (Article 4).

C. Rules of conduct with regard to property

(a) Public property

‘Although the occupant replaces the enemy State in the government of the invaded territory, his power is not absolute. So long as the fate of this territory remains in suspense -- that is, until peace -- the occupant is not free to dispose of what still belongs to the enemy and is not of use in military operation. Hence the following rules’

Art. 50. The occupant can only take possession of cash, funds and realizable or negotiable securities which are strictly the property of the State, depots of arms, supplies, and, in general, movable property of the State of such character as to be useful in military operations.

Art. 51. Means of transportation (railways, boats, & c.), as well as land telegraphs and landing-cables, can only be appropriated to the use of the occupant. Their destruction is forbidden, unless it be demanded by military necessity. They are restored when peace is made in the condition in which they then are.

Art. 52. The occupant can only act in the capacity of provisional administrator in respect to real property, such as buildings, forests, agricultural establishments, belonging to the enemy State (Article 6).

It must safeguard the capital of these properties and see to their maintenance.

Art. 53. The property of municipalities, and that of institutions devoted to religion, charity, education, art and science, cannot be seized.

All destruction or willful damage to institutions of this character, historic monuments, archives, Works of art, or science, is formally forbidden, save when urgently demanded by military necessity.

(b) Private property

‘If the powers of the occupant are limited with respect to the property of the enemy State, with greater reason are they limited with respect to the property of individuals.’

Art. 54. Private property, whether belonging to individuals or corporations, must be respected, and can be confiscated only under the limitations contained in the following articles.

Art. 55. Means of transportation (railways, boats, & c.), telegraphs, depots of arms and munitions of war, although belonging to companies or to individuals, may be seized by the occupant, but must be restored, if possible, and compensation fixed when peace is made.

Art. 56. Impositions in kind (requisitions) demanded from communes or inhabitants should be in proportion to the necessities of war as generally recognized, and in proportion to the resources of the country.

Requisitions can only be made on the authority of the commander in the locality occupied.

Art. 57. The occupant may collect, in the way of dues and taxes, only those already established for the benefit of the State. He employs them to defray the expenses of administration of the country, to the extent in which the legitimate government was bound.

Art. 58. The occupant cannot collect extraordinary contributions of money, save as an equivalent for fines, or imposts not paid, or for payments not made in kind.

Contributions in money can be imposed only on the order and responsibility of the general in chief, or of the superior civil authority established in the occupied territory, as far as possible, in accordance with the rules of assessment and incidence of the taxes in force.

Art. 59. In the apportionment of burdens relating to the quartering of troops and war contributions, account is taken of the charitable zeal displayed by the inhabitants in behalf of the wounded.

Art. 60. Requisitioned articles, when they are not paid for in cash, and war contributions are evidenced by receipts. Measures should be taken to assure the 'bona fide' character and regularity of these receipts.

III. Prisoners of war

A. Rules for captivity

'The confinement of prisoners of war is not in the nature of a penalty for crime (Article 21): neither is it an act of vengeance. It is a temporary detention only, entirely without penal character.

In the following provisions, therefore, regard has been had to the consideration due them as prisoners, and to the necessity of their secure detention.'

Art. 61. Prisoners of war are in the power of the hostile government, but not in that of the individuals or corps who captured them.

Art. 62. They are subject to the laws and regulations in force in the army of the enemy.

Art. 63. They must be humanely treated.

Art. 64. All their personal belongings, except arms, remain their property.

Art. 65. Every prisoner is bound to give, if questioned on the subject, his true name and rank. Should he fail to do so, he may be deprived of all, or a part, of the advantages accorded to prisoners of his class.

Art. 66. Prisoners may be interned in a town, a fortress, a camp, or other place, under obligation not to go beyond certain fixed limits; but they may only be placed in confinement as an indispensable measure of safety.

Art. 67. Any act of insubordination justifies the adoption towards them of such measure of severity as may be necessary.

Art. 68. Arms may be used, after summoning, against a prisoner attempting to escape.

If he is recaptured before being able to rejoin his own army or to quit the territory of his captor, he is only liable to disciplinary punishment, or subject to a stricter surveillance.

But if, after succeeding in escaping, he is again captured, he is not liable to punishment for his previous flight.

If, however, the fugitive so recaptured or retaken has given his parole not to escape, he may be deprived of the rights of a prisoner of war.

Art. 69. The government into whose hands prisoners have fallen is charged with their maintenance.

In the absence of an agreement on this point between the belligerent parties, prisoners are treated, as regards food and clothing, on the same peace footing as the troops of the government which captured them.

Art. 70. Prisoners cannot be compelled in any manner to take any part whatever in the operations of war, nor compelled to give information about their country or their army.

Art. 71. They may be employed on public works which have no direct connection with the operations in the theatre of war, which are not excessive and are not humiliating either to their military rank, if they belong to the army, or to their official or social position, if they do not form part thereof.

Art. 72. In case of their being authorized to engage in private industries, their pay for such services may be collected by the authority in charge of them. The sums so received

may be employed in bettering their condition, or may be paid to them on their release, subject to deduction, if that course be deemed expedient, of the expense of their maintenance.

B. Termination of captivity

‘The reasons justifying detention of the captured enemy exist only during the continuance of the war.’

Art. 73. The captivity of prisoners of war ceases, as a matter of right, at the conclusion of peace; but their liberation is then regulated by agreement between the belligerents.

‘Before that time, and by virtue of the “Geneva Convention,”

Art. 74. It also ceases as of right for wounded or sick prisoners who, after being cured, are found to be unfit for further military service. The captor should then send them back to their country.

‘During the war’

Art. 75. Prisoners of war may be released in accordance with a cartel of exchange, agreed upon by the belligerent parties.

‘Even without exchange’

Art. 76. Prisoners may be set at liberty on parole, if the laws of their country do not forbid it.

In this case they are bound, on their personal honour, scrupulously to fulfill the engagements which they have freely contracted, and which should be clearly specified. On its part, their own government should not demand or accept from them any service incompatible with the parole given.

Art. 77. A prisoner cannot be compelled to accept his liberty on parole. Similarly, the hostile government is not obliged to accede to the request of a prisoner to be set at liberty on parole.

Art. 78. Any prisoner liberated on parole and recaptured bearing arms against the government to which he had given such parole may be deprived of his rights as a prisoner of war, unless since his liberation he has been included in an unconditional exchange of prisoners.

IV. PERSONS INTERNED IN NEUTRAL TERRITORY

‘It is universally admitted that a neutral State cannot, without compromising its neutrality, lend aid to either belligerent, or permit them to make use of its territory. On the other hand, considerations of humanity dictate that asylum should not be refused to individuals who take refuge in neutral territory to escape death or captivity. Hence the following provisions, calculated to reconcile the opposing interests involved.’

Art. 79. A neutral State on whose territory troops or individuals belonging to the armed forces of the belligerents take refuge should intern them, as far as possible, at a distance from the theatre of war.

It should do the same towards those who make use of its territory for military operations or services.

Art. 80. The interned may be kept in camps or even confined in fortresses or other places. The neutral State decides whether officers can be left at liberty on parole by taking an engagement not to leave the neutral territory without permission.

Art. 81. In the absence of a special convention concerning the maintenance of the interned, the neutral State supplies them with the food, clothing, and relief required by humanity.

It also takes care of the 'materiel' brought in by the interned.

When peace has been concluded, or sooner if possible, the expenses caused by the internment are repaid to the neutral State by the belligerent State to which the interned belong.

Art. 82. The provisions of the 'Geneva Convention' of 22 August 1864 (Articles 10-18, 35-40, 59 and 74 above given), are applicable to the sanitary staff, as well as to the sick and wounded, who take refuge in, or are conveyed to, neutral territory.

'In particular,'

Art. 83. Evacuations of wounded and sick not prisoners may pass through neutral territory, provided the personnel and material accompanying them are exclusively sanitary. The neutral State through whose territory these evacuations are made is bound to take whatever measures of safety and control are necessary to secure the strict observance of the above conditions.

PART III : PENAL SANCTION

'If any of the foregoing rules be violated, the offending parties should be punished, after a judicial hearing, by the belligerent in whose hands they are. Therefore'

Art. 84. Offenders against the laws of war are liable to the punishments specified in the penal law.

'This mode of repression, however, is only applicable when the person of the offender can be secured. In the contrary case, the criminal law is powerless, and, if the injured party deem the misdeed so serious in character as to make it necessary to recall the enemy to a respect for law, no other recourse than a resort to reprisals remains.

Reprisals are an exception to the general rule of equity, that an innocent person ought not to suffer for the guilty. They are also at variance with the rule that each belligerent should conform to the rules of war, without reciprocity on the part of the enemy. This necessary rigour, however, is modified to some extent by the following restrictions:'

Art. 85. Reprisals are formally prohibited in case the injury complained of has been repaired.

Art. 86. In grave cases in which reprisals appear to be absolutely necessary, their nature and scope shall never exceed the measure of the infraction of the laws of war committed by the enemy.

They can only be resorted to with the authorization of the commander in chief.

They must conform in all cases to the laws of humanity and morality.

Appendix B: The Hague Rules of Air Warfare

The Hague, December, 1922-February, 1923³⁸⁴

CHAPTER I—Applicability: Classification and Marks.

ARTICLE I THE RULES OF AERIAL warfare apply to all aircraft, whether lighter or heavier than air, irrespective of whether they are, or are not, capable of floating on the water.

ARTICLE II The following shall be deemed to be public aircraft: a) Military aircraft. b) Non-military aircraft exclusively employed in the public service.

All other aircraft shall be deemed to be private aircraft.

ARTICLE III A military aircraft shall bear an external mark indicating its nation; and military character.

ARTICLE IV A public non-military aircraft employed for customs or police purposes shall carry papers evidencing the fact that it is exclusively employed in the public service. Such an aircraft shall bear an external mark indicating its nationality and its public non-military character.

ARTICLE V Public non-military aircraft other than those employed for customs or police purposes shall in time of war bear the same external marks, and for the purposes of these rules shall be treated on the same footing, as private aircraft.

ARTICLE VI Aircraft not comprised in Articles III and IV and deemed to be private aircraft shall carry such papers and bear such external marks as are required by the rules in force in their own country. These marks must indicate their nationality and character.

ARTICLE VII The external marks required by the above articles shall be so affixed that they cannot be altered in flight. They shall be as large as is practicable and shall be visible from above, from below and from each side.

ARTICLE VIII The external marks, prescribed by the rules in force in each State, shall be notified promptly to all other Powers.

Modifications adopted in time of peace of the rules prescribing external marks shall be notified to all other Powers before they are brought into force.

Modifications of such rules adopted at the outbreak of war or during hostilities shall be notified by each Power as soon as possible to all other Powers and at latest when they are communicated to their own fighting forces.

ARTICLE IX A belligerent non-military aircraft, whether public or private, may be converted into a military aircraft, provided that the conversion is effected within the jurisdiction of the belligerent State to which the aircraft belongs and not on the high seas.

ARTICLE X No aircraft may possess more than one nationality.

CHAPTER II—General Principles.

ARTICLE XI Outside the jurisdiction of any State, belligerent or neutral, all aircraft shall have full freedom of passage through-the air and of alighting.

³⁸⁴ These rules were never adopted by the powers concerned.

ARTICLE XII In time of war any State, whether belligerent or neutral, may forbid or regulate the entrance, movement or sojourn of aircraft within its jurisdiction.

CHAPTER III— Belligerents.

ARTICLE XIII Military aircraft are alone entitled to exercise belligerent rights.

ARTICLE XIV A military aircraft shall be under the command of a person duly commissioned or enlisted in the military service of the State; the crew must be exclusively military.

ARTICLE XV Members of the crew of a military aircraft shall wear a fixed distinctive emblem of such character as to be recognizable at a distance in case they become separated from their aircraft.

ARTICLE XVI No aircraft other than a belligerent military aircraft shall engage in hostilities in any form.

The term “hostilities” includes the transmission during flight of military intelligence for the immediate use of a belligerent.

No private aircraft, when outside the jurisdiction of its own country, shall be armed in time of war.

ARTICLE XVII The principles laid down in the Geneva Convention, 1906, and the Convention for the adaptation of the said Convention to Maritime War (No. X of 1907) shall apply to aerial warfare and to flying ambulances, as well as to the control over flying ambulances exercised by a belligerent commanding officer.

In order to enjoy the protection and privileges allowed to mobile medical units by the Geneva Convention, 1906, flying ambulances must bear the distinctive emblem of the Red Cross in addition to the usual distinguishing marks.

CHAPTER IV — Hostilities.

ARTICLE XVIII The use of tracer, incendiary, or explosive projectiles by or against air, is not prohibited.

This provision applies equally to States which are parties to the Declaration of St. Petersburg, 1868, and to those which are not.

ARTICLE XIX The use of false external marks is forbidden.

ARTICLE XX When an aircraft has been disabled, the occupants when endeavoring to escape by means of parachute must not be attacked in the course of their descent.

ARTICLE XXI The use of aircraft for the purpose of disseminating propaganda shall not be treated as an illegitimate means of warfare. Members of the crews of such aircraft must not be deprived of their rights as prisoners of war on the charge that they have committed such an act.

ARTICLE XXII Aerial bombardment for the purpose of terrorizing the civilian population, of destroying or damaging private property not of a military character, or of injuring non-combatants is prohibited.

ARTICLE XXIII Aerial bombardment for the purpose of enforcing compliance with requisitions in kind or payment of contributions in money is prohibited.

ARTICLE XXIV

- 1) Aerial bombardment is legitimate only when directed at a military objective, that is to say, an object of which the destruction or injury would constitute a distinct military advantage to the belligerent.

2) Such bombardment is legitimate only when directed exclusively at the following objectives: military forces; military works; military establishments or depots; factories constituting important and well-known centres engaged in the manufacture of arms, ammunition, or distinctively military supplies; lines of communication or transportation used for military purposes.

3) The bombardment of cities, towns, villages, dwellings, or buildings not in the immediate neighborhood of the operations of land forces is prohibited. In cases where the objectives specified in paragraph 2 are so situated, that they cannot be bombarded without the indiscriminate bombardment of the civilian population, the aircraft must abstain from bombardment.

4) In the immediate neighborhood of the operations of land forces, the bombardment of cities, towns, villages, dwellings, or buildings is legitimate provided that there exists a reasonable presumption that the military concentration is sufficiently important to justify such bombardment, having regard to the danger thus caused to the civilian population.

5) A belligerent State is liable to pay compensation for injuries to person or to property caused by the violation by any of its officers or forces of the provisions of this article.

ARTICLE XXV In bombardment by aircraft all necessary steps must be taken by the commander to spare as far as possible buildings dedicated to public worship, art, science, or charitable purposes, historic monuments, hospital ships, hospitals, and other places where the sick and wounded are collected, provided such buildings, objects or places are not at the time used for military purposes. Such buildings, objects and places must by day be indicated by marks visible to aircraft. The use of marks to indicate other buildings, objects or places than those specified above is to be deemed an act of perfidy. The marks used as aforesaid shall be in the case of buildings protected under the Geneva Convention the red cross on a white ground, and in the case of other protected buildings a large rectangular panel divided diagonally into two pointed [*sic*] triangular portions, one black and the other white.

A belligerent who desires to secure by night the protection for the hospitals and other privileged buildings above mentioned must take the necessary measures to render the special signs referred to sufficiently visible.

ARTICLE XXVI The following special rules are adopted for the purpose of enabling States to obtain more efficient protection for important historic monuments situated within their territory, provided that they are willing to refrain from the use of such monuments and a surrounding zone for military purposes, and to accept a special regime for their inspection.

1) A State shall be entitled, if it sees fit, to establish a zone of protection round such monuments situated in its territory. Such zones shall in time of war enjoy immunity from bombardment.

2) The monuments round which a zone is established shall be notified to other Powers in peace time through the diplomatic channel; the notification shall also indicate the limits of the zones. The notification may not be withdrawn in time of war.

3) The zone of protection may include, in addition to the area actually occupied by the monument or group of monuments, an outer zone, not exceeding 500 meters in width, measured from the circumference of the said area.

4) Marks clearly visible from aircraft either by day or by night will be employed for the purpose of ensuring the identification by belligerent airmen of the limits of the zones.

5) The marks on the monuments themselves will be those defined in Article XXV. The marks employed for indicating the surrounding zones will be fixed by each State adopting the provisions of this article, and will be notified to other Powers at the same time as the monuments and zones are notified.

6) Any abusive use of the marks indicating the zones referred to in paragraph 5 will be regarded as an act of perfidy.

7) A State adopting the provisions of this article must abstain from using the monument and the surrounding zone for military purposes, or for the benefit in any way whatever of its military organization, or from committing within such monument or zone any act with a military purpose in view.

8) An inspection committee consisting of three neutral representatives accredited to the State adopting the provisions of this article, or their delegates, shall be appointed for the purpose of ensuring that no violation is committed of the provisions of paragraph 7. One of the members of the committee of inspection shall be the representative (or his delegate) of the State to which has been entrusted the interests of the opposing belligerent.

ARTICLE XXVII Any person on board a belligerent or neutral aircraft is to be deemed a spy only if acting clandestinely or on false pretences he obtains or seeks to obtain, while in the air, information within belligerent jurisdiction or in the zone of operations of a belligerent with the intention of communicating it to the hostile party.

ARTICLE XXVIII Acts of espionage committed after leaving the aircraft by members of the crew of an aircraft or by passengers transported by it are subject to the provisions of the Land Warfare Regulations.

ARTICLE XXIX Punishment of the acts of espionage referred to in Articles XXVII and XXVIII is subject to Articles XXX and XXXI of the Land Warfare Regulations.

CHAPTER V—Military Authority Over Enemy and Neutral Aircraft and Persons on Board.

ARTICLE XXX In case a belligerent commanding officer considers that the presence of aircraft is likely to prejudice the success of the operations in which he is engaged at the moment, he may prohibit the passing of neutral aircraft in the immediate vicinity of the forces or may oblige them to follow a particular route. A neutral aircraft which does not conform to such directions, of which it has had notice issued by the belligerent commanding officer, may be fired upon.

ARTICLE XXXI In accordance with the principles of Article LIII of the Land Warfare Regulations, neutral private aircraft found upon entry in the enemy's jurisdiction by a belligerent occupying force may be requisitioned, subject to the payment of full compensation.

ARTICLE XXXII Enemy public aircraft, other than those treated on the same footing private aircraft, shall be subject to confiscation without prize proceedings.

ARTICLE XXXIII Belligerent non-military aircraft, whether public or private, flying within the jurisdiction of their own State, are liable to be fired upon unless they make the nearest available landing on the approach of enemy military aircraft.

ARTICLE XXXIV Belligerent non-military aircraft, whether public or private, are liable to be fired upon, if they fly (1) within the jurisdiction of the enemy, or (2) in the immediate vicinity thereof and outside the jurisdiction of their own State, or (3) in the immediate vicinity of the military operations of the enemy by land or sea.

ARTICLE XXXV Neutral aircraft flying within the jurisdiction of a belligerent, and warned of the approach of military aircraft of the opposing belligerent, must make the nearest available landing. Failure to do so exposes them to the risk of being fired upon.

ARTICLE XXXVI When an enemy military aircraft falls into the hands of a belligerent, the members of the crew and the passengers, if any, may be made prisoners of war.

The same rule applies to the members of the crew and the passengers, if any, of an enemy public non-military aircraft, except that in the case of public non-military aircraft devoted exclusively to the transport of passengers, the passengers will be entitled to be released unless they are in the service of the enemy, or are enemy nationals fit for military service.

If an enemy private aircraft falls into the hands of a belligerent, members of the crew who are enemy nationals, or who are neutral nationals in the service of the enemy, may be made prisoners of war. Neutral members of the crew, who are not in the service of the enemy are entitled to be released if they sign a written undertaking not to serve in any enemy aircraft while hostilities last. Passengers are entitled to be released unless they are in the service of the enemy or are enemy nationals fit for military service, in which cases they may be made prisoners of war.

Release may in any case be delayed if the military interests of the belligerents so require.

The belligerent may hold as prisoners of war any member of the crew or any passenger whose service in a flight at the close of which he has been captured has been of special and active assistance to the enemy.

The names of individuals released after giving a written undertaking in accordance with the third paragraph of this article will be notified to the opposing belligerent, who must not knowingly employ them in violation of their undertaking.

ARTICLE XXXVII Members of the crew of a neutral aircraft which has been detained by a belligerent shall be released unconditionally, if they are neutral nationals and not in the service of the enemy. If they are enemy nationals or in the service of the enemy, they may be made prisoners of war.

Passengers are entitled to be released unless they are in the service of the enemy or are enemy nationals fit for military service, in which cases they may be made prisoners of war.

Release may in any case be delayed if the military interests of the belligerent so require.

The belligerent may hold as prisoners of war any member of the crew or any passenger whose service in a flight at the close of which he has been captured has been of special and active assistance to the enemy.

ARTICLE XXXVIII Where under the - provisions of Articles XXXVI and XXXVII it is provided that members of the crew or passengers may be made prisoners of war, it is to be understood that, if they are not members of the armed forces, they shall be entitled to treatment not less favorable than that accorded to prisoners of war.

CHAPTER VI—Belligerent Duties Towards Neutral States and Neutral Duties Towards Belligerent States.

ARTICLE XXXIX Belligerent aircraft are bound to respect the rights of neutral Powers and to abstain within the jurisdiction of a neutral State from the commission of any act which it is the duty of that State to prevent.

ARTICLE XL Belligerent military aircraft are forbidden to enter the jurisdiction of a neutral State.

ARTICLE XLI Aircraft on board vessels of war, including aircraft-carriers, shall be regarded as part of such vessels.

ARTICLE XLII A neutral government must use the means at its disposal to prevent the entry within its jurisdiction of belligerent military aircraft and to compel them to alight if they have entered such jurisdiction.

A neutral government shall use the means at its disposal to intern any belligerent military aircraft which is within its jurisdiction after having alighted for any reason whatsoever, together with its crew and the passengers, if any.

ARTICLE XLIII The personnel of a disabled belligerent military aircraft rescued outside neutral waters and brought into the jurisdiction of a neutral State by a neutral military aircraft and there landed shall be interned.

ARTICLE XLIV The supply in any manner, directly or indirectly, by a neutral government to a belligerent Power of aircraft, parts of aircraft, or material, supplies or munitions required for aircraft is forbidden.

ARTICLE XLV Subject to the provisions of Article XLVI, a neutral Power is not bound to prevent the export or transit on behalf of a belligerent of aircraft, parts of aircraft, or material, supplies or munitions for aircraft.

ARTICLE XLVI A neutral government is bound to use the means at its disposal:

- 1) to prevent the departure from its jurisdiction of an aircraft in a condition to make a hostile attack against a belligerent Power, or carrying or accompanied by appliances or materials the mounting or utilisation of which would enable it to make a hostile attack, if there is reason to believe that such aircraft is destined for use against a belligerent Power.
- 2) to prevent the departure of an aircraft the crew of which includes any member of the combatant forces of a belligerent Power.
- 3) to prevent work upon an aircraft designed to prepare it to depart in contravention of the purpose of this article.

On the departure by air of any aircraft despatched by persons or companies in neutral jurisdiction to the order of a belligerent Power, the neutral government must prescribe for such aircraft a route avoiding the neighbourhood of the military operations of the opposing belligerent, and must exact whatever guarantees may be required to ensure that the aircraft follows the route prescribed.

ARTICLE XLVII A neutral State is bound to take such steps as the means at its disposal permit to prevent within its jurisdiction aerial observation of the movements,

operations or defences of one belligerent, with the intention of informing the other belligerent.

This provision applies equally to a belligerent military aircraft on board a vessel of war.

ARTICLE XLVIII The action of a neutral Power in using force or other means at its disposal in the exercise of its lights or duties under these rules cannot be regarded as a hostile act.

CHAPTER VII—Visit and Search, Capture and Condemnation

ARTICLE XLIX Private aircraft are liable to visit and search and to capture by belligerent military aircraft.

ARTICLE L Belligerent military aircraft have the right to order public non-military and private aircraft to alight in or proceed for visit and search to a suitable locality reasonably accessible.

Refusal, after warning, to obey such orders to alight or to proceed to such a locality for examination exposes an aircraft to the risk of being fired upon.

ARTICLE LI Neutral public non-military aircraft, other than those which are to be treated as private aircraft, are subject only to visit for the purpose of the verification of their papers.

ARTICLE LII Enemy private aircraft are liable to capture in all circumstances.

ARTICLE LIII A neutral private aircraft is liable to capture if it:

- a) resists the legitimate exercise of belligerent rights;
- b) violates a prohibition of which it has had notice issued by a belligerent commanding officer under Article XXX;
- c) is engaged in unneutral service; country;
- d) is armed in time of war when outside the jurisdiction of its own
- e) has no external marks or uses false marks;
- f) has no papers or insufficient or irregular papers;
- g) is manifestly out of line between the point of departure and the point of destination indicated in its papers and, after such enquiries as the belligerent may deem necessary, no good cause is shown for the deviation. The aircraft, together with its crew and passengers, if any, may be detained by the belligerent, pending such enquiries;
- h) carries, or itself constitutes, contraband of war;
- i) is engaged in breach of a blockade duly established and effectively maintained;
- k) has been transferred from belligerent to neutral nationality at a date and in circumstances indicating an intention of evading the consequences to which an enemy aircraft, as such, is exposed.

Provided that in each case, except (k), the ground for capture shall be an act carried out in the flight in which the neutral aircraft came into belligerent hands, i.e., since it left its point of departure and before it reached its point of destination.

ARTICLE LIV The papers of a private aircraft will be regarded as insufficient or irregular if they do not establish the nationality of the aircraft and indicate the names and nationality of the crew and passengers, the points of departure and destination of the flight, together with particulars of the cargo and the conditions under which it is transported. The logs must also be included.

ARTICLE LV Capture of an aircraft or of goods on board an aircraft shall be made the subject of prize proceedings, in order that any neutral claim may be duly heard and determined.

ARTICLE LVI A private aircraft captured upon the ground that it has no external marks or is using false marks, or that it is armed in time of war outside the jurisdiction of its own country, is liable to condemnation.

A neutral private aircraft captured upon the ground that it has disregarded the direction of a belligerent commanding officer under Article XXX is liable to condemnation, unless it can justify its presence within the prohibited zone.

In all other cases, the prize court in adjudicating upon any case of capture of an aircraft or its cargo, or of postal correspondence on board an aircraft, shall apply the same rules as would be applied to a merchant vessel or its cargo or to postal correspondence on board a merchant vessel.

ARTICLE LVII Private aircraft which are found upon visit and search to be enemy aircraft may be destroyed if the belligerent commanding officer finds it necessary to do so, provided that all persons on board have first been placed in safety and all the papers of the aircraft have been preserved.

ARTICLE LVIII Private aircraft which are found upon visit and search to be neutral aircraft liable to condemnation upon the ground of unneutral service, or upon the ground that they have no external marks or are bearing false marks, may be destroyed, if sending them in for adjudication would be impossible or would imperil the safety of the belligerent aircraft or the success of the operations in which it is engaged. Apart from the cases mentioned above, a neutral private aircraft must not be destroyed except in the gravest military emergency, which would not justify the officer in command in releasing it or sending it in for adjudication.

ARTICLE LIX Before a neutral private aircraft is destroyed, all persons on board must be placed in safety, and all the papers of the aircraft must be preserved.

A captor who has destroyed a neutral private aircraft must bring the capture before the prize court, and must first establish that he was justified in destroying it under Article LVIII. If he fails to do this, parties interested in the aircraft or its cargo are entitled to compensation. If the capture is held to be invalid, though the act of destruction is held to have been justifiable, compensation must be paid to the parties interested in place of the restitution to which they would have been entitled.

ARTICLE LX Where a neutral private aircraft is captured on the ground that it is carrying contraband, the captor may demand the surrender of any absolute contraband on board, or may proceed to the destruction of such absolute contraband, if sending in the aircraft for adjudication is impossible or would imperil the safety of the belligerent aircraft or the success of the operations in which it is engaged. After entering in the log book of the aircraft the delivery or destruction of the goods, and securing, in original or copy, the relevant papers of the aircraft, the captor must allow the neutral aircraft to continue its flight.

The provisions of the second paragraph of Article LIX will apply where absolute contraband on board a neutral private aircraft is handed over or destroyed.

CHAPTER VIII—Definitions.

ARTICLE LXI The term “military” throughout these rules is to be read as referring to all branches of the forces, i.e., the land forces, the naval forces, and the air forces.

ARTICLE LXII Except so far as special rules are here laid down, and except also so far as the provisions of Chapter VII of these Rules or international conventions indicate that maritime law and procedure are applicable, aircraft personnel engaged in hostilities come under the laws of war and neutrality applicable to land troops in virtue of the custom and practice of international law and of the various declarations and conventions to which the States concerned are parties.

Appendix C: Guidelines for Justifiable Warfare

Historically, the Christian Reformed tradition has defended the concept of a just war. In 1939, the Calvin Theological Seminary faculty prepared a lengthy and well-balanced statement, which was adopted by that year's synod. A study committee presented the Synod of 1964 with a revised "Statement on Warfare," based on the 1939 study. This synod referred the statement to the churches for study. No subsequent synod has ever officially adopted the 1964 statement. Delegates at Synod 1982 updated the 18-year-old document and adopted it as "Guidelines for Justifiable Warfare."³⁸⁵

The Just War

1. It is, in the Christian view, the task and responsibility of the state to establish and maintain a just political order and to secure in law the religious, social, and economic freedoms, which its citizens require for meeting their obligations to God and neighbor.
2. It is recognized by the church that sin, expressing itself in lawlessness, continuously threatens the established political order and the freedoms it guarantees.
3. The church believes that when this lawlessness is armed and directed violently against the state, the state is authorized by God himself to counter this attack through the use of such force as will render the attack inoperative and enable the state to perform its function to preserve justice and freedom.
4. The Christian church, in articulating the ideal of peace proclaimed by our Lord Jesus Christ, the Prince of Peace, may not so construe that ideal as to deprive the state in principle of the sword given to it for the defense of order and freedom. There can therefore be no objection *a priori* to the existence of a military establishment or to the manufacture and strategic disposition of weapons calculated to deter the lawless.
5. The state is authorized to counter with force not only the armed lawlessness of its own citizens, but also that of hostile states bent on conquest and enslavement. It may engage both in police action against its recalcitrant citizens and in military action against foreign states forcibly disturbing the order of justice in which human freedoms are secured.

The Just War Implications

6. A just war, as traditionally understood and endorsed by the Christian church, is a war the *object* of which is not utterly to destroy but effectually to deter the lawless; the concrete aim of a just war is not the annihilation but the overpowering of the enemy state and the consequent assignment to it of its rightful place in the family of nations.
7. In the Christian view the *ultimate purpose* of a just war is the establishment of a lasting peace upon the foundation of justice. Its final end is the achievement of a righteous and stable political order within which concrete human values are preserved and a well-ordered human society can flourish.
8. No war may be considered just which, while visiting destruction upon all that is bad, destroys every living human witness to that which is good; no war can be considered

³⁸⁵ Originally published in "The Banner" of 19 July 19 1982.

an allowable remedy for evil which destroys, together with this evil, all or almost all of history's accumulated goods; no war can be considered a fit political instrument for the establishment of peace which brings no peace but the peace of death.

9. Although a just war is in principle thinkable, and in the past was concretely possible, it is at least questionable whether, in view of the destructive power of modern weapons, it can any longer become actual. Any war which would scorch the earth, destroy all or the major part of the technical, cultural, and spiritual treasures of mankind, and annihilate the human race or leave alive only a maimed and wounded fragment of it lies outside the traditional concept of a just war and must be judged morally impermissible.

Exhortation

10. The church recognizes that there exists in thermonuclear weapons and missiles a destructive power too frightful to contemplate and too sinister to tolerate. Considering the extreme difficulty, if not the impossibility, of limiting nuclear weapons if war should break out, the church enjoins upon the nations of the world their duty to establish a framework of mutual agreement to scrap these weapons, and to do so without delay under international surveillance.
11. The church recognizes that the decision to do this will not be taken if men and nations are not prompted thereto by the Spirit of God. It therefore calls upon all its members to pray for the initiation, continuation, and success of disarmament discussions, and indeed for the establishment of peace with justice.
12. Because prayer is neither sincere nor effectual when not expressive of personal commitment and when not accompanied by appropriate deeds, the church calls upon its members to work for peace in every honorable way and to support with Christian judgment, charity, and vigor the existing agencies and institutions, national and international, which have been established to secure justice, understanding, and cooperation among nations and peoples.
13. Because no work is maximally effective which is not directed by understanding, the church calls upon its members who are theologians, philosophers, and scientists, and upon its members who are pastors, teachers, and other leaders to provide instruction and guidance in matters of national and international concern in order that through the relevant proclamation of the Word and through the disciplined judgment and enlightened activity of its members the church may also in this area be in truth "the salt of the earth" and "the light of the world."

Appendix D: Catholic Catechism
JUST WAR IN THE
CATECHISM OF THE CATHOLIC CHURCH

SAFEGUARDING PEACE

PEACE

2302: By recalling the commandment, “You shall not kill,” [Mt. 5:21] our Lord asked for peace of heart and denounced murderous anger and hatred as immoral. Anger is a desire for revenge. “To desire vengeance in order to do evil to someone who should be punished is illicit,” but it is praiseworthy to impose restitution “to correct vices maintain justice.” [St. Thomas Aquinas, *ST II-II q158, a1 ad3*] If anger reaches the point of a deliberate desire to kill or seriously wound a neighbor, it is gravely against charity; it is a mortal sin. The Lord says, “Everyone who is angry with his brother shall be liable to judgment.” [Mt. 5:22]

2303: Deliberate hatred is contrary to charity. Hatred of the neighbor is a sin when one deliberately wishes him evil. Hatred of the neighbor is a grave sin when one deliberately desires him grave harm. “But I say to you, Love your enemies and pray for those who persecute you, so that you may be sons of your Father who is in heaven.” [Mt. 5:44-45]

2304: Respect for and development of human life require peace. Peace is not merely the absence of war, and it is not limited to maintaining a balance of powers between adversaries. Peace cannot be attained on earth without safeguarding the goods of persons, free communication among men, respect for the dignity of persons and peoples, and the assiduous practice of fraternity. Peace is “the tranquility of order.” [St. Augustine, *City of God* 19, 13,1] Peace is the work of justice and the effect of charity. [Cf. Is. 32:17; cf. Vatican II, *Guadium et spes* #78, 1-2]

2305: Earthly peace is the image and fruit of the peace of Christ, the messianic “Prince of Peace.” [Is. 9:5] By the blood of his Cross, “in his own person he killed the hostility,” [Eph. 2:16; cf. Col. 1:20-22] he reconciled men with God and made his Church the sacrament of the unity of the human race and of its union with God. “He is our peace.” [Eph. 2:14] He has declared: “Blessed are the peacemakers.” [Mt. 5:9]

2306: Those who renounce violence and bloodshed and, in order to safeguard human rights, make use of those means of defense available to the weakest, bear witness to evangelical charity, provided they do so without harming the rights and obligations of other men and societies. They bear legitimate witness to the gravity of the physical and moral risks of recourse to violence, with all its destruction and death. [Cf. Vatican II, *Guadium et spes* 78, 5]

Avoiding War

2307: The fifth commandment forbids the intentional destruction of human life. Because of the evils and injustices that accompany all war, the Church insistently urges everyone

to prayer and to action so that the divine Goodness may free us from the ancient bondage of war. [Cf. Vatican II, *Guadium et spes* 81, 4] All citizens and all governments are obliged to work for the avoidance of war. However, “as long as the danger of war persists and there is no international authority with the necessary competence and power, governments cannot be denied the right of lawful self-defense, once all peace efforts have failed.” [Cf. Vatican II, *Guadium et spes* 79, 4]

2308: All citizens and all governments are obliged to work for the avoidance of war. However, “as long as the danger of war persists and there is no international authority with the necessary competence and power, governments cannot be denied the right of lawful self-defense, once all peace efforts have failed.”[105]

2309: The strict conditions for legitimate defense by military force require rigorous consideration. The gravity of such a decision makes it subject to rigorous conditions of moral legitimacy. At one and the same time: - the damage inflicted by the aggressor on the nation or community of nations must be lasting, grave, and certain; - all other means of putting an end to it must have been shown to be impractical or ineffective; - there must be serious prospects of success; - the use of arms must not produce evils and disorders graver than the evil to be eliminated. The power of modern means of destruction weighs very heavily in evaluating this condition. These are the traditional elements enumerated in what is called the “just war” doctrine. The evaluation of these conditions for moral legitimacy belongs to the prudential judgment of those who have responsibility for the common good.

2310: Public authorities, in this case, have the right and duty to impose on citizens the obligations necessary for national defense. Those who are sworn to serve their country in the armed forces are servants of the security and freedom of nations. If they carry out their duty honorably, they truly contribute to the common good of the nation and the maintenance of peace.[Cf. Vatican: II, *Guadium et spes* 79, 5]

2311: Public authorities should make equitable provision for those who for reasons of conscience refuse to bear arms; these are nonetheless obliged to serve the human community in some other way.[Cf. Vatican II, *Guadium et spes* 79, 3] 2312 The Church and human reason both assert the permanent validity of the moral law during armed conflict. “The mere fact that war has regrettably broken out does not mean that everything becomes licit between the warring parties.” [Cf. Vatican II, *Guadium et spes* 79, 4]

2313: Non-combatants, wounded soldiers, and prisoners must be respected and treated humanely. Actions deliberately contrary to the law of nations and to its universal principles are crimes, as are the orders that command such actions. Blind obedience does not suffice to excuse those who carry them out. Thus the extermination of a people, nation, or ethnic minority must be condemned as a mortal sin. One is morally bound to resist orders that command genocide.

2314: “Every act of war directed to the indiscriminate destruction of whole cities or vast areas with their inhabitants is a crime against God and man, which merits firm and: un-

equivocal condemnation.” [Cf. Vatican II, *Guadium et spes* 80, 3]A danger of modern warfare is that it provides the opportunity to those who possess modern scientific weapons - especially atomic, biological, or chemical weapons - to commit such crimes.

2315: The accumulation of arms strikes many as a paradoxically suitable way of deterring potential adversaries from war. They see it as the most effective means of ensuring peace among nations. This method of deterrence gives rise to strong moral reservations. The arms race does not ensure peace. Far from eliminating the causes of war, it risks aggravating them. Spending enormous sums to produce ever new types of weapons impedes efforts to aid needy populations; [Pope Paul VI, *Populorum Progressio* 53] it thwarts the development of peoples. Over- armament multiplies reasons for conflict and increases the danger of escalation.

2316: The production and the sale of arms affect the common good of nations and of the international community. Hence public authorities have the right and duty to regulate them. The short-term pursuit of private or collective interests cannot legitimate undertakings that promote violence and conflict among nations and compromise the international juridical order.

2317: Injustice, excessive economic or social inequalities, envy, distrust, and pride raging among men and nations constantly threaten peace and cause wars. Everything done to overcome these disorders contributes to building up peace and avoiding war: Insofar as men are sinners, the threat of war hangs over them and will so continue until Christ comes again; but insofar as they can vanquish sin by coming together in charity, violence itself will be vanquished and these words will be fulfilled: “they shall beat their swords into plowshares, and their spears into pruning hooks; nation shall not lift up sword against nation, neither shall they learn war any more.” [Cf. Vatican II, *Guadium et spes* 78, 6; cf. Is. 2:4]

Appendix E: Confederation of Reformed Evangelicals’ Memorial

Following the acts of terror perpetrated against the United States of America on September 11, 2001, the member churches of the Confederation of Reformed Evangelicals—being situated in Canada and the United States of America—affirm the following:³⁸⁶

1. Because God is God (omnipotent, omnipresent, omniscient, triune, etc), all of history is under His control. Nothing happens apart from His knowledge and without His divine decree. Therefore, we must view these recent events in the light of God’s sovereignty rather than from the carnal point of view. It is God who has brought this disaster upon the United States (Amos 3:6). While not denying that wicked individuals committed these acts, we affirm that God was active in these events for His glory and honor.
2. Both the United States of America and Canada continue to sin against the true and living God, and His Son Jesus Christ, and have slipped into wholesale idolatry and polytheism. Our countrymen have done this in the name of tolerance and acceptance, tolerating everything except the truth. Our civil and religious representatives tell damnable lies when they say that the faiths of Abraham and Mohammed are the same, that Yahweh and Allah are the same, that the living God wants His people to commune with infidels, and that we regard as enemies those who believe in such a thing as truth (Ex. 20:3, John 4:22, Eph. 4:3-6). These are the lies we and our countrymen bid our leaders to tell us, lies which we believe to our own destruction. Therefore, God has brought this judgment upon the United States as a warning to her and to any nation that turns its face against the living God. The only faithful response is confession of sin, drawing near to Jesus Christ, and repentance (Joel, *passim*).
3. Apart from repentance we will find no blessing for our nations in these events. God is not blessing our lands in this attack by drawing the people of the United States together, and the people of Canada and of other nations together, in furthering some sort of humanistic neighborhood. Being an American, or a Canadian, is not the same as being a Christian.
4. It is appropriate for the United States to respond to this terrorist attack by using military force in order to bring the terrorists to justice. Furthermore, it is lawful for believing Christians to participate in this military response.
5. It is not lawful for women to be mustered for combat service, for our Lord has declared it an abomination for women to don the martial attire of a man (Deuteronomy 22:5). Christian fathers must protect their daughters from being seduced or coerced into such a circumstance, and the Church must support them as they do so.
6. It is not lawful to respond in the name of the false gods we currently worship, with a proud and arrogant spirit. The United States and her allies have no right whatever to

³⁸⁶ Available from <http://www.christkirk.com/images/911%20Memorial.html>. Internet; accessed 1 July 2002.

expect God to bestow blessing upon any military responses so long as our peoples embrace the idols of pluralism, protect the carnage of abortion, muster our daughters for combat service, and honor the perversions of sodomy. Though it is lawful and right for the United States to respond militarily, if her people continue to protect these and other corruptions as a way of life, they cannot expect to enjoy God's blessing upon such endeavors, or anything other than continued judgment both on the battlefield and off.

Therefore, mindful of this judgment of God, the churches of the Confederation of Reformed Evangelicals set aside September 11, 2002, as a day of prayer and fasting, that we may unite in confessing the sins of our respective nations.

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