CHAPTER 11

War and Terrorism

On the morning of September 11, 2001, the world watched in horror the televised terrorist attacks on the World Trade Center in New York. Approximately 3,000 people died in the attacks on the World Trade Center, 184 in the attack on the Pentagon, and 40 passengers and crew members in the hijacked plane that went down in Shanksville, Pennsylvania. In addition, nineteen hijackers were killed in the four plane crashes. Following the attacks, President George W. Bush declared war on terrorism and launched a military campaign against Afghanistan's Taliban government and the Afghan-based terrorist organization al-Qaeda, which was held responsible for the attacks on the World Trade Center. In 2003 President Bush launched a preemptive strike on Iraq which, he argued, not only possessed weapons of mass destruction but was harboring terrorist groups bent on destroying America.

BACKGROUND

The September 11 attack and our response to it raise several moral issues. Is terrorism ever morally justified? What is the morally proper response to terrorism? Are preemptive wars or wars of aggression ever morally acceptable? What means should a government use to protect its citizens from attack or threats of attack?

War involves the use of armed violence between nations or between competing political factions to achieve a political purpose. Although there are some societies, such as the Eskimos, who have no term for war and have never engaged in warfare, war has been a fact of life in most organized states (including tribal states). Indeed, some philosophers, such as Thomas Hobbes and Elizabeth Anscombe, argue that war is necessary for the survival of a civil society.

The advent of the modern nation-state and the rise of nationalism increased the scale of war. The nineteenth century witnessed efforts to put an end to war through international peace movements and plans to organize nations to ensure peace. After World War I abolitionists sought to control war through the formation of the League of Nations. Despite some initial hope for international peace and cooperation, the wars of the twentieth century dwarfed all previous wars in terms of their destructiveness. In the twentieth century 191 million people were killed either directly or indirectly by war. Half of these people were civilians. The United Nations (UN) was

established in 1945 after World War II to promote world peace and justice. However, this objective was not achieved, possibly because of the UN's lack of judicial and enforcement power. Since the end of World War II there have been more than four hundred wars. Worldwide, wars now kill about 1.6 million people a year. In addition, many millions more die of starvation and other war-related causes, or are maimed or forced to relocate.[1]

Motives for war include self-defense against aggression or threat of aggression, the desire to expand one's territory either directly or indirectly through control of markets and resources, and ideological/religious motives. The concept of a holy war emerged in the Christian tradition during the Crusades and is found today among certain radical Islamic groups. Most wars have mixed motives. For example, the current war on terrorism is a response to the threat of aggression and also has ideological/religious undertones in that both sides portray it as a war of good against evil and each side claims to be doing God's will.

The Islamic term ***jihad,*** often defined as a holy war, is more broadly defined as an "effort." This effort includes first of all the notion of the struggle against one's own internal problems or inner evil, and second, the struggle against injustice in society or the world. Some Muslims understand *jihad* as peaceful and nonviolent, whereas others interpret it as permitting, and perhaps even requiring, war against external enemies. Islamic views on war and peace are discussed in the reading by Sohail H. Hashmi.

Terrorism involves the use of politically motivated violence to target noncombatants and create intimidation. Terrorism is most often used by groups that lack the power to engage in conventional warfare. It is usually indirect and avoids direct confrontation with enemy military forces. Terrorism can be sponsored by non-state groups, as in the September 11 attacks and the 2008 attacks in Mumbai, India, which killed 179 people. The line between war and terrorism is imprecise. Terrorism can be used as a strategy in the context of a war, such as when the United States dropped nuclear bombs on Hiroshima and Nagasaki during World War II. Terrorism can also be domestic, as was the case in the 1995 bombing of the Federal Building in Oklahoma City.

THE PHILOSOPHERS ON WAR AND TERRORISM

Christian natural law theory has had a major impact on thinking about the morality of war. In his *Summa Theologica,* Thomas Aquinas (1225–1274) lists three conditions that must be met for a war to be just: The war must be waged by a legitimate authority, the cause should be just, and the belligerents should have the right intentions. The just-war tradition is discussed in more detail in the following section.

Italian renaissance thinker Niccolò Machiavelli (1469–1527) maintained that a powerful military was essential for political independence. In *The Prince,* Machiavelli counsels rulers to disregard whether their actions will be considered virtuous or vicious and instead do whatever is necessary to achieve success in battle quickly and efficiently. Machiavelli was part of the public debate on war up until World War II, when the rise of tyrants like Hitler and the advent of nuclear weapons made his by-any-means-necessary ideas too dangerous as guidelines for war.

THOMAS AQUINAS, *SUMMA THEOLOGICA*, PART II, QUESTION 40

Of War . . .

First Article

Whether It Is Always Sinful to Wage War?

. . . 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. . . . 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 (Rom. xiii, 4): *He heareth 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. lxxxi. 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.*

Secondly, a just cause is required, namely that those who are attacked, should be attacked because they deserve it on account of some fault. Wherefore, Augustine says (*QQ. 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.*

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.*

Like Aquinas, Dutch statesman and philosopher Hugo Grotius (1583–1645) believed that there should be limits on war. War should only be fought to enforce rights, and it should be fought within the limits of law and good faith. Grotius's belief that war should only be fought in the cause of international interests, such as human rights and maintenance of peace, is found in the Charter of the United Nations.

English philosopher Thomas Hobbes (1588–1679) was convinced that fear of death and the need for security are the psychological underpinnings of civilization. Hobbes

also believed that humans are naturally selfish. In a state of nature, violence would be the norm and life would be "mean, brutish, and short." The answer to this unpleasant situation is the formation of a civil society. In civil society the authority to use violence is transferred to the sovereign, whose power is absolute. "The Sovereign," writes Hobbes in the *Leviathan,* "[has] the Right of making Warre and Peace with other Nations, and Commonwealths; that is to say, of Judging when it is for the publique good."[2]

Although Hobbes argued for absolute sovereigns as a hedge against war, in fact nations with totalitarian governments seem more susceptible to civil war than democratic governments. Furthermore, even though the formation of governments resolves the problem of constant violence within societies, without an international government the collection of nations still exists in a state of nature. Indeed Hobbes himself believed that nothing short of a world government with a monopoly of power over all nations would be sufficient to ensure peace.

Arab historian and philosopher Ibn Khaldun (1332–1406) likewise believed that war is a universal and inevitable part of human existence. This view is found in the Qu'ran and the Sunna (the practice of Muhammad), both of which hold a prominent place in Muslim ethical/legal discussions about war. According to the Qu'ran, man's nature is to live in a state of harmony and peace with other living beings. Peace is not just the absence of war, but surrendering to Allah's will and living in accord with his laws. The prophet Muhammad (c. 570–632) taught that the use of force should be avoided except as a last resort. However, given human capacity for choice we are all capable of being tempted by evil and disobeying Allah's will. Consequently the Qu'ran gives Muslims permission to fight against a wrongful aggressor.

In his essay "Perpetual Peace" Immanuel Kant (1724–1804) writes that although "the desire of every nation is to establish an enduring peace [nature] uses two means to prevent people from intermingling and to separate them: differences in languages and differences in religion, which do indeed dispose men to mutual hatred and to pretexts for war." He proposed the creation of a European confederation of states. He also believed that the maintenance of peace requires the establishment of constitutional government, rather than autocracy.

Unlike Kant, Friedrich Nietzsche (1844–1900) glorified war. "A good war hallows every cause," wrote Nietzsche in *Thus Spake Zarathustra*. War, he believed, is a natural activity for the *Übermensch* or "superman." Nietzsche despised Christian morality that makes a virtue out of submissiveness and turning the other cheek. Nietzsche's philosophy was adopted by some Nazi intellectuals to justify Adolph Hitler's war on the Jews.

Utilitarians such as Jeremy Bentham and John Stuart Mill provided much of the philosophical background for the peace movement in the nineteenth century. War is immoral because it causes pain and diminishes happiness. Because of this, another means must be found for resolving international conflicts.

THE JUST-WAR TRADITION

Just-war theory is not a single theory but an evolving framework. Theories of just war are found in both Western and non-Western religious and secular ethics. In their readings in this chapter Coady and Hashmi both examine the just-war tradition, Coady

from a Western philosophical tradition and Hashmi from the perspective of Islamic ethics. The **just-war tradition** addresses the questions of *jus ad bellum* (the right to go to war), and *jus in bello* (the just conduct of war).

Jus ad bellum

Jus ad bellum states that the following conditions should be met before going to war:

1. War must be declared and waged by a legitimate authority.
2. There must be a just cause for going to war.
3. War must be the last resort.
4. There must be a reasonable prospect of success.
5. The violence used must be proportional to the wrong being resisted.[3]

While these conditions seem reasonable in theory, it can be difficult to determine if they are being satisfied. For example, what is meant by a legitimate authority? The Hobbesian belief that the only legitimate authority is an absolute sovereignty is no longer accepted. Today most people regard democratically elected governments as more legitimate. The idea of legitimate authority also raises the question of whether governments are the only legitimate authorities. The United Nations recognizes the right of self-determination of groups of people as well as states. Do groups of disenfranchised people, such as the American colonists who waged war against the British, constitute a legitimate authority?

Also, what constitutes a just cause? Former President George W. Bush reserved the right to make a preemptive or "preventive" strike against any nation he perceived as a threat, even though that nation had not taken any aggressive action against us. Is this consistent with the requirements of *jus ad bellum?* If so, would we be justified attacking Iran?

Furthermore, how do we know that we have tried all other options before going to war? According to pacifists, there are always nonviolent alternatives to war, including nonviolent resistance toward an occupying force. And how does one determine if the prospect for success is reasonable? When the U.S. and British forces invaded Iraq in 2003, they felt confident that they had an excellent prospect of quick success. Yet several years later the war was still going on. On the other hand, few reasonable people thought the American colonists could win a war against the British Empire.

Finally, how do we determine what is proportional? Was the destruction of thousands of civilian lives in the atomic bombings of Hiroshima and Nagasaki worth the possible loss of American military lives in an invasion of Japan?

Jus in bello

For a war to be conducted justly, the following two conditions should be met:

1. Noncombatants should not be intentionally targeted.
2. The tactics used must be a proportional response to the injury being redressed.

It is possible for a justly waged war to be fought unjustly. For example, even though World War II was a just war from the perspective of the Allies, some people maintain

CHARTER OF THE UNITED NATIONS

Chapter I, Purposes and Principles

Article 1

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement or international disputes or situations which might lead to a breach of the peace;
2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measure to strengthen universal peace;
3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all . . .

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles. . . .

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.
4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

that the scatter bombing of German cities by the Allies (see Case Study 1) and the dropping of nuclear bombs on Japan violated both principles of *jus in bello*. The My Lai massacre in the Vietnam War also violated the principle of noncombatant immunity. In this incident American soldiers entered a Vietnamese village and found only women, children, and old men. Frustrated that the male combatants had managed to escape, Lieutenant William Calley ordered his soldiers to open fire on the villagers.

Noncombatants include those who are not agents in directing aggression or carrying it out. However, in modern warfare the line between noncombatants and combatants tends to be blurred. Even children can be drawn into war as combatants, as happened in Vietnam and is happening in the Sudan (see Case Study 5 in Chapter 10). Also, is it fair to hold individual soldiers responsible in countries where young people are forcibly conscripted into military service? Indeed, the politicians who launch the wars rarely serve on the front lines. Along the same lines, is the assassination of

Chapter VII, Action with Respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Article 51

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

terrorist leaders morally justifiable? Brian Jenkins explores this question in his reading at the end of the chapter. See also Case Study 5.

Furthermore, is it just to kill enemy combatants who do not pose a direct threat to our lives, as in the case of the bombing of retreating Iraqi soldiers during the First Gulf War? Should we treat those who work in weapons factories as enemy combatants? Just-war tradition also does not give adequate guidance on what constitutes acceptable treatment of prisoners of war or enemy combatants, an issue addressed by David Luban in his reading in this chapter. Is torture morally acceptable as a means of trying to get information from an enemy combatant about a possible future terrorist attack, information that could potentially save hundreds of lives?

In addition, the just-war tradition does not adequately address *jus post bellum,* or justice after war. Is occupation of a defeated nation or territory morally acceptable

and, if so, under what circumstances? To what extent is it just for the victor to attempt to change the political system and culture of the occupied country? Do countries have a moral obligation following a war to make restitution to civilians harmed by war?

WEAPONS OF MASS DESTRUCTION

Unlike conventional **weapons, weapons of mass destruction (WMD),** such as nuclear, chemical, and biological weapons, indiscriminately target both combatants and noncombatants. In the years following World War II nuclear weapons were used as a deterrent by the United States and the Soviet Union. The reasoning behind deterrence is that the consequences of retaliation would be so catastrophic that neither side would risk a first strike with nuclear weapons.

With the end of the cold war, instead of disarmament, the threat of global nuclear war between the two superpowers was replaced by the proliferation of nuclear weapons throughout the world and concerns about the use of nuclear weapons by terrorist groups. In 2002 former President Bush rejected the long-standing commitment of the United States not to use nuclear weapons in a first strike or against nonnuclear nations.

Worldwide, there are about 30,000 nuclear weapons, more than 1,500 of which are ready to launch at a moment's notice. The United States alone has about 10,000 nuclear weapons positioned at sites in the United States and Europe. Russia, Britain, France, China, Israel, India, Pakistan, and North Korea also possess nuclear weapons.[4] Arab nations are particularly concerned about Israel's arsenal of nuclear weapons, whereas Israel is concerned about the possibility that Iran and other Arab nations may be producing nuclear weapons and other WMDs.[5] Jonathan Granoff, in "Nuclear Weapons, Ethics, Morals and Law," questions the legitimacy of using nuclear weapons, even for deterrence, and urges that all countries work toward the elimination of nuclear weapons. President Obama has endorsed this as a long-term goal.

Chemical and biological weapons have been around much longer than nuclear weapons. During the French and Indian War the British gave small-pox-infected blankets to the Delaware Indians. Anthrax and mustard gas were both used by the Germans in World War I. The use, though not the production and possession, of chemical and biological weapons was prohibited by the 1925 Geneva Convention. Despite the prohibition, thousands of people died as a result of Soviet chemical and biological weapons that were used in Afghanistan, Laos, and Cambodia. Saddam Hussein also used chemical weapons against the Kurds in Northern Iraq.

Today many countries have biological weapons programs. Unlike the production of nuclear weapons, which requires expensive facilities and highly enriched uranium, biological and chemical weapons are sometimes called "the poor man's atomic bomb" because their construction is much cheaper and their effects can be just as devastating. In addition, recent developments in biotechnology and genetic engineering have made it possible to produce biological agents that have greater resistance to detection and treatment. According to the U.S. Department of Transportation more than 120 million people fly into the United States from foreign countries every year. It takes up

to two weeks for the symptoms of a contagious disease contracted in another country or on a plane to appear, which gives potential terrorists ample time to go into hiding.

PACIFISM AND CONSCRIPTION

There are different types of **pacifism. Absolute pacifists** believe that all violence is wrong, even for self-defense. This position has been criticized for being contradictory because it assumes a right not to be attacked, but not the right of self-defense to defend that right.[6] It is immoral and irresponsible, critics argue, not to allow countries to defend their citizens against aggression. Some pacifists get around these objections by maintaining that while they have a duty not to meet force with force, this is a **supererogatory duty** (morality that goes beyond what is normally required) and not one that is binding on all people. Other pacifists oppose violence except for self-defense and may even participate, though not as combatants, in a war of self-defense.

Pacifists actively seek peaceful alternatives to war. Indian political activist Mohandas "Mahatma" Gandhi (1869–1948) opposed all war and advocated nonviolent resistance (*satyagraha*) as a response to violence and oppression. ***Satyagraha*** is not passive "non-violence," but a method of unconditional love (*ahimsa*) in action. Peace is not simply the absence of war but the presence of justice and the practice of *ahimsa.* In her article, -Elizabeth Anscombe rejects pacifism as a morally untenable position and argues that the Bible permits and even requires war in some instances.

Conscription, or mandatory military service, raises issues of justice as well as freedom of conscience. The first national draft in the United States was during the Civil War. However, there was a proviso that allowed a person drafted to buy a substitute for $300 (about a year's wages). The draft was reinstated in World War I. Sixteen million young American men were conscripted between 1917 and the end of the Vietnam War in 1973.

The military defines **conscientious objection** (CO) as "opposition to war, in any form, based on a moral, religious, or ethical code." There were an estimated 37,000 conscientious objectors in World War II and 200,000 in the Vietnam War.[7] In addition to proving they are sincere in their opposition to all wars (no easy task), a conscientious objector still must go through boot camp, although not weapons training, and then be assigned to some sort of civilian duty after the training. Only a small percentage of people who apply for CO status receive it. (See Case Study 3.)

Some objectors choose to engage in civil disobedience and go to prison. Henry David Thoreau, in his essay on "Civil Disobedience" (1849), writes that when breaking an unjust law and engaging in **civil disobedience,** one should do so in a manner that is consistent with moral principles; in keeping with this, civil dissidents must:

1. Use only moral and nonviolent means to achieve their goal.
2. First make an effort to bring about change through legal means.
3. Be open and public about their actions.
4. Be willing to accept the consequences of their actions.

Other conscientious objectors choose to leave the country or go into the military but refuse to fire on the enemy. Sometimes people become conscientious objectors after

joining the military and experiencing war. (See Case Study 3.) According to a survey conducted by the U.S. military at the end of World War II, up to 75 percent of soldiers in some of the units refused to fire on the enemy or fired their weapons into the air.[8]

Although the Selective Service System still exists and young men are required to register with it within a month of their eighteenth birthday, conscription was abolished in the United States after the Vietnam War. In 2003, the Universal National Service Act was introduced in Congress in response to the strain being placed on the professional military by the war in Iraq. The act was rewritten and reintroduced in 2005 and again in 2006 and 2007. If it ever passes, it would reinstate conscription, making it "the obligation of every citizen [male and female] of the United States, and every other person residing in the United States, who is between the ages of 18 and 42 to perform a period of [two years] of national service." Deferments would be granted to full-time high school students under the age of 20 and exemptions given for extreme hardship or physical or mental disability as well as for those who have "served honorably in the military for at least six months." People who are conscientious objectors would be assigned to either noncombat or national civilian service.

Americans have a long history of ambivalence about military conscription. The primary moral argument against conscription is based on autonomy. Conscription, which puts the draftee at risk for death or permanent disability, is a violation of a person's liberty rights and lowers the quality and motivation of the military. Senator Ron Paul disagrees. He argues that conscription discriminates against poorer Americans and constitutes forced servitude.[9] In fact, the voluntary army is made up disproportionately of poorer people. One of the complaints of the current voluntary system is that military recruiters tend to target poor youth in urban centers—the so-called "poverty draft." During the economic recession that began in 2008, military recruitment figures went way up and all branches of the military exceeded their recruitment goals as Americans who were laid off sought stable employment.

Arguments for the draft focus on social justice and equality. In "Sharing the Burden," Stephen Joel Trachtenberg supports conscription on the grounds of equality. He also argues that a draft would promote a sense of unity and a common vision. Opponents of the draft note that equality was not promoted when the draft existed. They claim that a universal draft will accomplish only the indoctrination of draftees into nationalistic and militaristic attitudes. On the other hand, research suggests that democracies that have conscripted armies are more cautious about going to war because people are more personally affected.

THE MORAL ISSUES

Respect for Persons

Pacifists argue that war is incompatible with the moral imperative to treat persons as ends-in-themselves. War, by dividing people into us and the enemy, dehumanizes the so-called enemy and creates an us-versus-them/good-versus-evil mentality. In a 2007

Gallup poll, 70 percent of Americans stated that they had an unfavorable view toward Muslim countries; only 7 percent had a favorable view. Despite our claim that civilians in enemy countries are innocent, their deaths as "collateral damages" are not given the moral weight of deaths of American combatants.

Jonathan Granoff argues that war violates the principle of reciprocity or the Golden Rule, which is based on respect for persons. On the other hand, those who support the just-war theory, such as Aquinas, Anscombe, and Coady, point out that for a government to stand by and not defend its citizens against an aggressive attack involves not taking the personhood and security of its citizens seriously.

Rights

In the military, autonomy is restricted for the sake of the greater good. This is particularly evident in conscription, in which the duty of fidelity to one's country is seen as overriding one's liberty rights. War raises the issue of the rights of political communities as well. Hobbes regarded the right to security and freedom from violence as one of the most basic rights and the primary purpose of the social contract. This entails the right of a state to defend itself against attack. The right to a preemptive strike is generally regarded as an extension of the right to self-defense. However, how great and how imminent does the threat need to be to justify a preemptive strike? Was the invasion of Iraq morally justified on the grounds of self-defense?

The Universal Declaration of Human Rights and subsequent international human rights laws protect the rights of all people. Noncombatants have a right to life and a basic standard of living. In addition, prisoners of war have a right to decent treatment under international law. However, many nations continue to violate these basic human rights.

The United States has refused to adopt international human rights law, arguing that U.S. law provides adequate protection of human rights. The rights of 171 "enemy combatants" being held, as of May 2011, by the United States government at Guantanamo Bay in Cuba raised questions about the adequacy of this policy. The U.S. Supreme Court in 2006 ruled that former President Bush had overstepped his power in ordering war-crimes trials for detainees. President Obama issued an executive order to close down the prison at Guantanamo Bay and end torture and harsh interrogation techniques. However, in 2011 he reversed his position, signing the Defense Authorization Bill which prevents the transfer of prisoners from Guantanamo Bay to mainland United States or to other foreign countries. (See Case Study 5.)

The USA Patriot Act, which was passed soon after September 11, and the targeting of more than 5,000 Arabs and Muslims for detention and questioning also have serious implications for the protection of human rights. (See Case Study 2.) The U.S. government justifies these policies on the grounds of national security, arguing that the positive right of U.S. citizens to security outweighs the liberty rights of potential terrorists. In his reading, Luban argues that the war on terrorism may be seriously eroding international human rights. Justice was also an issue in the ban against permitting those who are openly homosexual to serve in the U.S. military. The ban was overturned in 2011.

Consequentialism and Nonmaleficence

The restriction on rights and the harms associated with war are generally justified as a means of preserving the greater good of society. However, is war the most utilitarian means to preserve beneficial ends such as our freedom, culture, and standard of living? Was World War II, for example, the best means, from a utilitarian point of view, of defeating Hitler? What about the war in Iraq? While most people agree that Iraq is better off without Saddam Hussein's regime, many disagree that an American invasion of Iraq was the best means of achieving this end. The question of consequences has come up again with Iran. What is the best means—war, negotiation, embargos—of reducing these countries' threat to us and other nations?

Utilitarians such as Bentham and Mill, although not pacifists, were opposed to war because of the grievous harms associated with it. According to the World Health Organization, war is one of the leading public health issues of our time.[10] In the four decades following World War II, more than 100 million people were killed during wars, with millions more dying of starvation and disease related to war.[11] Millions of people have lost their homes and sometimes even their homeland as a result of war. More than 6 million people were displaced in Sudan and Sierra Leone alone as a result of civil wars.

Principle of Double Effect

The principle of double effect is found in Catholic just-war theory. According to this principle, if a course of action, such as bombing a town, is likely to have two quite different effects, one legitimate and the other not, the action may still be permissible if the legitimate effect was intended (e.g., the disabling of a military installation or the bringing of a war to an end) and the illicit effect (e.g., the killing of civilians) unintended. The principle of double effect was used to justify the unintended killing of civilians in Hiroshima and Nagasaki.

One of the problems with this principle is that unintentional harms are still harms. Killing civilians unintentionally with another end in mind does not justify knowingly killing them, especially if the unintended harms of the action outweigh the intended benefits. The principle of double effect also reduces people being unintentionally harmed to a means only, and thus violates Kant's categorical imperative. For a more in-depth analysis of the principle of double effect see the reading by Elizabeth Anscombe at the end of this chapter.

Justice

The condition of proportionality in the just-war tradition is based on the principle of justice. This principle states that the violence used must be in proportion to the injury being redressed. Justice is also a concern surrounding conscription and in treatment of citizens in an occupied or conquered country.

Trachtenberg maintains that justice requires that we share the burden of military service through conscription. It is not fair that the burden of protecting our country is borne primarily by those who come from less privileged parts of society, as tends to be the case with a voluntary military.

In "Nuclear Weapons, Ethics, Morals and Law," Jonathan Granoff argues that allowing some nations to possess nuclear weapons while forbidding others to do so violates the principle of equality. Justice is also an issue in the treatment of prisoners of war and civilians in occupied countries.

Self-Determination

The United Nations recognizes the right of people to "self-determination, freedom and independence." The efforts of a victorious country to impose its form of government, its concept of freedom, and its cultural and economic values on another country have been criticized as a violation of a people's right to self-determination.

John Stuart Mill argued that self-determination and political freedom are not the same. A state has the right to self-determination even if its citizens are struggling for political freedom. Self-help, not occupation and liberation by another country, is the best way for citizens to develop the virtues necessary for self-governance. One of the arguments for withdrawing American troops from Iraq was that Iraqis should be allowed to determine the future course for their country, even if this means civil war.

On the other hand, assisting people in their struggle for freedom does not always violate their right to self-determination. For example, the French assisted the American colonists in the American Revolution. Knowing where to draw the line between interference and assistance in a people's struggle for self-determination has always been difficult.

Duty of Fidelity

In 2002 U.S. citizen John Walker Lindh was sentenced to twenty years in a federal prison for his association with al-Qaeda. Treason is considered worse than betrayal by a noncitizen because treason violates the duty of fidelity. Living in a country of one's own volition and benefiting from its protection and advantages create a prima facie duty of fidelity or loyalty to that country. However, what does this duty entail? Does the duty of fidelity justify conscription, or does it merely prohibit treason and terrorist acts against one's own government? What about instances in which one's own government is unjust?

Soldiers and others involved in a war effort also have a duty of fidelity to their commanders. However, this duty must be weighed against other moral duties. The argument by Nazi war criminals that they were just obeying the orders of their superiors was found unacceptable in international courts. People need to take personal responsibility for their choices. The duty of fidelity to serve the country can also come into conflict with the duty of fidelity to one's children. This raises the question of whether parent(s) of young children should be made to serve on active duty. (See Case Study 4.)

Personal Responsibility

Soldiers are not merely passive instruments of war. In the My Lai massacre in Vietnam, while most of the soldiers followed orders to "waste" the villagers, others refused to obey. One junior officer even stood between the soldiers and the villagers in an attempt to stop the slaughter.

SUMMARY OF READINGS ON WAR AND TERRORISM

Anscombe, "War and Murder." War, including preemptive strikes, is justified under limited conditions.

Coady, "War and Terrorism." Examines and critiques the just-war theory and its application to the morality of terrorism.

Hashmi, "Interpreting the Islamic Ethics of War and Peace." Discusses the Islamic ethics of war and the concept of *jihad* and applies them to current issues.

Granoff, "Nuclear Weapons, Ethics, Morals and Law." Possession of nuclear weapons is unethical. We should work toward their elimination.

Luban, "The War on Terrorism and the End of Human Rights." The current war on terrorism may seriously erode international human rights.

Jenkins, "Should Our Arsenal Against Terrorism Include Assassination?" Assassination of terrorist is morally wrong and has no place in America's arsenal.

Trachtenberg, "Sharing the Burden." Military conscription is desirable because it promotes equality and pluralism and a better understanding of the military.

Conscientious objection in the face of conscription also entails taking personal responsibility for one's decision. During the Vietnam War many conscientious objectors chose to leave the United States and take up residence in another country. Others engaged in civil disobedience and willingly accepted the punishment for their actions as a means of raising public awareness.

The people who design and produce weapons also must accept responsibility for their actions. Because much of the technology used in the production and delivery of weapons of mass destruction can have both peacetime and military applications, researchers need to be aware how the technology they are developing might be used.

CONCLUSION

Internationally, the world exists in a state of nature or anarchy. Weapons of mass destruction, globalization, and the development of new technologies make war and terrorism a greater threat than ever before. What is the solution? If the formation of a state under a social contract is the best means for controlling violence between individuals, is international government the answer for controlling violence between nations? Or is war just a natural part of life and is the solution to develop and enforce ethics for war, such as the just-war tradition? In the end, the responsibility lies with each of us as individuals to critically examine the justifications given for war and to work toward making the world more peaceful, whether that means taking up arms or becoming a conscientious objector.

ELIZABETH ANSCOMBE

War and Murder

British philosopher Elizabeth Anscombe (1919–2001) was a professor of philosophy at Cambridge University in England. In her essay she distinguishes between war and murder. Using both moral and biblical arguments, she concludes that war, including preemptive strikes, is justified under limited conditions.

Critical Reading Questions

1. What are the two attitudes regarding the exercise of violent coercive power by rulers?
2. According to Anscombe, why is the use of coercive power essential?
3. Why have wars been mostly unjust and "mere wickedness on both sides"?
4. What does it mean to be "innocent"?
5. What is the difference between war and murder?
6. What is "pacifism" and on what grounds does Anscombe reject it?
7. What, according to Anscombe, does the Bible say about the permissibility of war?
8. What is the "principle of double effect" and how does Anscombe apply this principle to the killing of innocent people in war?
9. How does Anscombe respond to critics who say that the just-war theory is no longer relevant in the modern world?

THE USE OF VIOLENCE BY RULERS

Since there are always thieves and frauds and men who commit violent attacks on their neighbours and murderers, and since without law backed by adequate force there are usually gangs of bandits; and since there are in most places laws administered by people who command violence to enforce the laws against law-breakers; the question arises: what is a just attitude to this exercise of violent coercive power on the part of rulers and their subordinate officers?

Two attitudes are possible: one, that the world is an absolute jungle and that the exercise of coercive power by rulers is only a manifestation of this; and the other, that it is both necessary and right that there should be this exercise of power, that through it the world is much less of a jungle than it could possibly be without it, so that one should in principle be glad of the existence of such power, and only take exception to its unjust exercise.

It is so clear that the world is less of a jungle because of rulers and laws, and that the exercise of coercive power is essential to these institutions as they are now—all this is so obvious, that probably only Tennysonian conceptions of progress enable people who do not wish to separate themselves from the world to think that nevertheless such violence is objectionable, that some day, in this present dispensation, we shall do without it, and that the pacifist is the man who sees and tries to follow the ideal course, which future civilization must one day pursue. It is an illusion, which would be fantastic if it were not so familiar.

"War and Murder," in *Nuclear Weapons: A Catholic Response,* ed. by Walter Stein (New York: Sheed and Ward, 1961), 45–62.

In a peaceful and law abiding country such as England, it may not be immediately obvious that the rulers need to command violence to the point of fighting to the death those that would oppose it; but brief reflection shews that this is so. For those who oppose the force that backs law will not always stop short of fighting to the death and cannot always be put down short of fighting to the death.

Then only if it is in itself evil violently to coerce resistant wills, can the exercise of coercive power by rulers be bad as such. . . .

Society is essential to human good; and society without coercive power is generally impossible.

The same authority which puts down internal dissension, which promulgates laws and restrains those who break them if it can, must equally oppose external enemies. These do not merely comprise those who attack the borders of the people ruled by the authority; but also, for example, pirates and desert bandits, and, generally, those beyond the confines of the country ruled whose activities are viciously harmful to it. . . . Further, there being such a thing as the common good of mankind, and visible criminality against it, how can we doubt the excellence of such a proceeding as that violent suppression of the man-stealing business which the British government took it into its head to engage in under Palmerston? The present-day conception of "aggression," like so many strongly influential conceptions, is a bad one. Why *must* it be wrong to strike the first blow in a struggle? The only question is, who is in the right.

Here, however, human pride, malice and cruelty are so usual that it is true to say that wars have mostly been mere wickedness on both sides. Just as an individual will constantly think himself in the right, whatever he does, and yet there is still such a thing as being in the right, so nations will constantly wrongly think themselves to be in the right—and yet there is still such a thing as their being in the right. Palmerston doubtless had no doubts in prosecuting the opium war against China, which was diabolical; just as he exulted in putting down the slavers. But there is no question but that he was a monster in the one thing, and a just man in the other.

The probability is that warfare is injustice, that a life of military service is a bad life "militia or rather malitia," as St. Anselm called it. This probability is greater than the probability (which also exists) that membership of a police force will involve malice, because of the character of warfare: the extraordinary occasions it offers for viciously unjust proceedings on the part of military commanders and warring governments, which at the time attract praise and not blame from their people. It is equally the case that the life of a ruler is usually a vicious life: but that does not shew that ruling is as such a vicious activity.

The principal wickedness which is a temptation to those engaged in warfare is the killing of the innocent, which may often be done with impunity and even to the glory of those who do it. In many places and times it has been taken for granted as a natural part of waging war: the commander, and especially the conqueror, massacres people by the thousand, either because this is part of his glory, or as a terrorizing measure, or as part of his tactics.

INNOCENCE AND THE RIGHT TO KILL INTENTIONALLY

It is necessary to dwell on the notion of non-innocence here employed. Innocence is a legal notion; but here, the accused is not pronounced guilty under an existing code of law, under which he has been tried by an impartial judge, and therefore made the target of attack. There is hardly a possibility of this; for the administration of justice is something that takes place under the aegis of a sovereign authority; but in warfare—or the putting down by violence of civil disturbance—the sovereign authority is itself engaged as a party to the dispute and is not subject to a further earthly and temporal authority which can judge the issue and pronounce against the accused. . . . What is required, for the people attacked to be non-innocent in the relevant sense, is that they should themselves be

engaged in an objectively unjust proceeding which the attacker has the right to make his concern; or—the commonest case—should be unjustly attacking him. Then he can attack them with a view to stopping them; and also their supply lines and armament factories. But people whose mere existence and activity supporting existence by growing crops, making clothes, etc. constitute an impediment to him—such people are innocent and it is murderous to attack them, or make them a target for an attack which he judges will help him towards victory. For murder is the deliberate killing of the innocent, whether for its own sake or as a means to some further end.

The right to attack with a view to killing is something that belongs only to rulers and those whom they command to do it. I have argued that it does belong to rulers precisely because of that threat of violent coercion exercised by those in authority which is essential to the existence of human societies. . . .

When a private man struggles with an enemy he has no right to aim to kill him, unless in the circumstances of the attack on him he can be considered as endowed with the authority of the law and the struggle comes to that point. By a "private" man, I mean a man in a society; I am not speaking of men on their own, without government, in remote places; for such men are neither public servants nor "private." The plea of self-defence (or the defence of someone else) made by a private man who has killed someone else must in conscience—even if not in law—be a plea that the death of the other was not intended, but was a side effect of the measures taken to ward off the attack. . . . The deliberate choice of inflicting death in a struggle is the right only of ruling authorities and their subordinates.

In saying that a private man may not choose to kill, we are touching on the principle of "double effect." . . . Thus, if I push a man over a cliff when he is menacing my life, his death is considered as intended by me, but the intention to be justifiable for the sake of self-defence. Yet the lawyers would hardly find the laying of poison tolerable as an act of self-defence, but only killing by a violent action in a moment of violence. Christian moral theologians have taught that even here one may not seek the death of the assailant, but may in default of other ways of self-defence use such violence as will in fact result in his death. The distinction is evidently a fine one in some cases: what, it may be asked, can the intention be, if it can be said to be absent in this case, except a mere wish or desire? . . . [T]he principle of double effect has more important applications in warfare, and I shall return to it later.

THE INFLUENCE OF PACIFISM

Pacifism has existed as a considerable movement in English speaking countries ever since the first world war. I take the doctrine of pacifism to be that it is *eo ipso* wrong to fight in wars, not the doctrine that it is wrong to be compelled to, or that any man, or some men, may refuse; and I think it false for the reasons that I have given. But I now want to consider the very remarkable effects it has had: for I believe its influence to have been enormous, far exceeding its influence on its own adherents.

We should note first that pacifism has as its background conscription and enforced military service for all men. Without conscription, pacifism is a private opinion that will keep those who hold it out of armies, which they are in any case not obliged to join. Now universal conscription, except for the most extraordinary reasons, i.e. as a regular habit among most nations, is such a horrid evil that the refusal of it automatically commands a certain amount of respect and sympathy. . . .

A powerful ingredient in this pacifism is the prevailing image of Christianity. This image commands a sentimental respect among people who have no belief in Christianity, that is to say, in Christian dogmas; yet do have a certain belief in an ideal which they conceive to be part of "true Christianity." It is therefore important to understand this image of Christianity and to know how false it is. Such understanding is relevant, not merely to those who wish to believe Christianity,

but to all who, without the least wish to believe, are yet profoundly influenced by this image of it.

According to this image, Christianity is an ideal and beautiful religion, impracticable except for a few rare characters. It preaches a God of love whom there is no reason to fear; it marks an escape from the conception presented in the Old Testament, of a vindictive and jealous God who will terribly punish his enemies. The "Christian" God is a *roi fainéant,* whose only triumph is in the Cross; his appeal is to goodness and unselfishness, and to follow him is to act according to the Sermon on the Mount—to turn the other cheek and to offer no resistance to evil. In this account some of the evangelical counsels are chosen as containing the whole of Christian ethics: that is, they are made into precepts. (Only some of them; it is not likely that someone who deduces the *duty* of pacifism from the Sermon on the Mount and the rebuke to Peter, will agree to take "Give to him that asks of you" equally as a universally binding precept.)

The turning of counsels into precepts results in high-sounding principles. Principles that are mistakenly high and strict are a trap; they may easily lead in the end directly or indirectly to the justification of monstrous things. Thus if the evangelical counsel about poverty were turned into a precept forbidding property owning, people would pay lip service to it as the ideal, while in practice they went in for swindling. "Absolute honesty!" it would be said: "I can respect that—but of course that means having no property; and while I respect those who follow that course, I have to compromise with the sordid world myself." If then one must "compromise with evil" by owning property and engaging in trade, then the amount of swindling one does will depend on convenience. This imaginary case is paralleled by what is so commonly said: absolute pacifism is an ideal; unable to follow that, and committed to "compromise with evil," one must go the whole hog and wage war *à outrance.*

The truth about Christianity is that it is a severe and practicable religion, not a beautifully ideal but impracticable one. Its moral precepts, . . . are those of the Old Testament; and its God is the God of Israel.

It is ignorance of the New Testament that hides this from people. It is characteristic of pacifism to denigrate the Old Testament and exalt the New: something quite contrary to the teaching of the New Testament itself, which always looks back to and leans upon the Old. How typical it is that the words of Christ "You have heard it said, an eye for an eye and a tooth for a tooth, but I say to you . . ." are taken as a repudiation of the ethic of the Old Testament! People seldom look up the occurrence of this phrase in the juridical code of the Old Testament, where it belongs, and is the admirable principle of law for the punishment of certain crimes, such as procuring the wrongful punishment of another by perjury. People often enough *now* cite the phrase to justify private revenge; no doubt this was as often "heard said" when Christ spoke of it. But no justification for this exists in the personal ethic taught by the Old Testament. On the contrary. What do we find? "Seek no revenge" (Leviticus xix, 18), and "If you find your enemy's ox or ass going astray, take it back to him; if you see the ass of someone who hates you lying under his burden, and would forbear to help him; you must help him" (Exodus xxiii, 4–5). And "If your enemy is hungry, give him food, if thirsty, give him drink" (Proverbs xxv, 21).

This is only one example; given space, it would be easy to shew how false is the conception of Christ's teaching as *correcting* the religion of the ancient Israelites, and substituting a higher and more "spiritual" religion for theirs. Now the false picture I have described plays an important part in the pacifist ethic and in the ethic of the many people who are not pacifists but are influenced by pacifism.

To extract a pacifist doctrine—i.e. a condemnation of the use of force by the ruling authorities, and of soldiering as a profession—from the evangelical counsels and the rebuke to Peter, is to disregard what else is in the New Testament. . . . A centurion was the first Gentile to be baptized; there is no suggestion in the New Testament that soldiering was regarded as incompatible with Christianity. The martyrology contains many names of soldiers whose occasion for martyrdom

was not any objection to soldiering, but a refusal to perform idolatrous acts.

Now, it is one of the most vehement and repeated teachings of the Judaeo-Christian tradition that the shedding of innocent blood is forbidden by the divine law. No man may be punished except for his own crime, and those "whose feet are swift to shed innocent blood" are always represented as God's enemies.

For a long time the main outlines of this teaching have seemed to be merely obvious morality: . . . And indeed, that it is terrible to kill the innocent is very obvious; the morality that so stringently forbids it must make a great appeal to mankind, especially to the poor threatened victims. Why should it need the thunder of Sinai and the suffering and preaching of the prophets to promulgate such a law? But human pride and malice are everywhere so strong that now, with the fading of Christianity from the mind of the West, this morality once more stands out as a demand which strikes pride- and fear-ridden people as too intransigent. . . .

Now pacifism teaches people to make no distinction between the shedding of innocent blood and the shedding of any human blood. And in this way pacifism has corrupted enormous numbers of people who will not act according to its tenets. They become convinced that a number of things are wicked which are not; hence, seeing no way of avoiding "wickedness," they set no limits to it. How endlessly pacifists argue that all war must be *à outrance!* that those who wage war must go as far as technological advance permits in the destruction of the enemy's people. As if the Napoleonic wars were perforce fuller of massacres than the French war of Henry V of England. It is not true: the reverse took place. Nor is technological advance particularly relevant; it is mere squeamishness that deters people who would consent to area bombing from the enormous massacres *by hand* that used once to be committed.

The policy of obliterating cities was adopted by the Allies in the last war; they need not have taken that step, and it was taken largely out of a villainous hatred, and as corollary to the policy, now universally denigrated, of seeking "unconditional surrender." (That policy itself was visibly wicked, and could be and was judged so at the time; it is not surprising that it led to disastrous consequences, even if no one was clever and detached enough to foresee this at the time.)

Pacifism and the respect for pacifism is not the only thing that has led to a universal forgetfulness of the law against killing the innocent; but it has had a great share in it.

THE PRINCIPLE OF DOUBLE EFFECT

Catholics, however, can hardly avoid paying at least lip-service to that law. So we must ask: how is it that there has been so comparatively little conscience exercised on the subject among them? The answer is: double-think about double effect.

The distinction between the intended, and the merely foreseen, effects of a voluntary action is indeed absolutely essential to Christian ethics. For Christianity forbids a number of things as being bad in themselves. But if I am answerable for the foreseen consequences of an action or refusal, as much as for the action itself, then these prohibitions will break down. If someone innocent will die unless I do a wicked thing, then on this view I am his murderer in refusing: so all that is left to me is to weigh up evils. Here the theologian steps in with the principle of double effect and says: "No, you are no murderer, if the man's death was neither your aim nor your chosen means, and if you had to act in the way that led to it or else do something absolutely forbidden." Without understanding of this principle, anything can be—and is wont to be—justified, and the Christian teaching that in no circumstances may one commit murder, adultery, apostasy (to give a few examples) goes by the board. These absolute prohibitions of Christianity by no means exhaust its ethic; there is a large area where what is just is determined partly by a prudent weighing up of consequences. But the prohibitions are bedrock, and without them the Christian ethic goes to pieces. Hence the necessity of the notion of double effect.

At the same time, the principle has been repeatedly abused from the seventeenth century up till now. The causes lie in the history of philosophy. From the seventeenth century till now what may be called Cartesian psychology has dominated the thought of philosophers and theologians. According to this psychology, an intention was an interior act of the mind which could be produced at will. Now if intention is all important—as it is—in determining the goodness or badness of an action, then, on this theory of what intention is, a marvellous way offered itself of making any action lawful. You only had to "direct your intention" in a suitable way. In practice, this means making a little speech to yourself: "What I mean to be doing is. . . ."

This same doctrine is used to prevent any doubts about the obliteration bombing of a city. The devout Catholic bomber secures by a "direction of intention" that any shedding of innocent blood that occurs is "accidental." I know a Catholic boy who was puzzled at being told by his schoolmaster that it was an *accident* that the people of Hiroshima and Nagasaki were there to be killed; in fact, however absurd it seems, such thoughts are common among priests who know that they are forbidden by the divine law to justify the direct killing of the innocent.

It is nonsense to pretend that you do not intend to do what is the means you take to your chosen end. Otherwise there is absolutely no substance to the Pauline teaching that we may not do evil that good may come.

SOME COMMONLY HEARD ARGUMENTS

There are a number of sophistical arguments, often or sometimes used on these topics, which need answering.

Where do you draw the line? As Dr. Johnson said, the fact of twilight does not mean you cannot tell day from night. There are borderline cases, where it is difficult to distinguish, in what is done, between means and what is incidental to, yet in the circumstances inseparable from, those means. The obliteration bombing of a city is not a borderline case.

The old "conditions for a just war" are irrelevant to the conditions of modern warfare, so that must be condemned out of hand. People who say this always envisage only major wars between the Great Powers, which Powers are indeed now "in blood stepp'd in so far" that it is unimaginable for there to be a war between them which is not a set of enormous massacres of civil populations. But these are not the only wars. Why is Finland so far free? At least partly because of the "posture of military preparedness" which, considering the character of the country, would have made subjugating the Finns a difficult and unrewarding task. The offensive of the Israelis against the Egyptians in 1956 involved no plan of making civil populations the target of military attack.

In a modern war the distinction between combatants and noncombatants is meaningless, so an attack on anyone on the enemy side is justified. This is pure nonsense; even in war, a very large number of the enemy population are just engaged in maintaining the life of the country, or are sick, or aged, or children. . . .

Whether a war is just or not is not for the private man to judge: he must obey his government. Sometimes, this may be, especially as far as concerns causes of war. But the individual who joins in destroying a city, like a Nazi massacring the inhabitants of a village, is too obviously marked out as an enemy of the human race to shelter behind such a plea.

Finally, horrible as it is to have to notice this, we must notice that even the arguments about double effect—which at least show that a man is not willing openly to justify the killing of the innocent—are now beginning to look old-fashioned. Some Catholics are not scrupling to say that *anything* is justified in defence of the continued existence and liberty of the Church in the West. A terrible fear of communism drives people to say this sort of thing. "Our Lord told us to fear those who can destroy body and soul, not to fear the destruction of the body" was blasphemously said to a friend of mine; meaning: "so, we must fear Russian domination

more than the destruction of people's bodies by obliteration bombing."

But whom did Our Lord tell us to fear, when he said: "I will tell you whom you shall fear" and "Fear not them that can destroy the body, but fear him who can destroy body and soul in hell"? He told us to fear God the Father, who can and will destroy the unrepentant disobedient, body and soul, in hell.

. . . So we have to fear God and keep his commandments, and calculate what is for the best only within the limits of that obedience, knowing that the future is in God's power and that no one can snatch away those whom the Father has given to Christ.

It is not a vague faith in the triumph of "the spirit" over force (there is little enough warrant for that), but a definite faith in the divine promises, that makes us believe that the Church cannot fail. Those, therefore, who think they must be prepared to wage a war with Russia involving the deliberate massacre of cities, must be prepared to say to God: "We had to break your law, lest your Church fail. We could not obey your commandments, for we did not believe your promises."

Discussion Questions

1. Anscombe supports preemptive strikes under certain conditions. Discuss whether she would support the United States' preemptive strikes against Iran based on the probability that they are making nuclear weapons.
2. Anscombe argues that the Bible supports war, while Christian pacifists claim that war is inconsistent with the teachings of Jesus. Discuss the merits of both positions.
3. Like Anscombe, former President George W. Bush believes that evil exists and that God permits governments to limit the power of evil through the use of violence. However, the Islamic terrorists also believe that God is on their side and that it is the United States that is evil. Referring to just-war theory, discuss the legitimacy of the use of religious ideology to morally justify war.
4. Martyrdom operations are tactics used by Palestinians as well as al-Qaeda. While some Muslims regard suicide bombing as merely suicide and a violation of God's law, other Muslims regard suicide bombers as martyrs. Discuss the use of suicide bombers in light of the *jus in bello*.

C.A.J.COADY

War and Terrorism

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"War and Terrorism," in *A Companion to Applied Ethics*, ed. by R. G. Frey and Christopher Heath Wellman (Oxford, UK: Blackwell, 2003), 254–265.

Critical Reading Questions

1. According to Coady, what are some of the problems with Hobbes's political philosophy?
2. In what way does Hobbes's position on war mirror the division in the just-war theory?
3. What is *jus ad bellum* and what are the five rules of *jus ad bellum?*
4. What is the requirement for proportionality?
5. What are some of the problems with the condition of "reasonable success"?
6. What is the *jus ad bellum* position on the use of war as self-defense?
7. What is a "humanitarian war" and what is Coady's position on the permissibility of humanitarian wars?
8. What are the two primary rules of *jus in bello?*
9. What is "collateral damage" in war and how does this relate to the principle of noncombatant immunity and the principle of double effect?
10. What is "terrorism" and is it ever justified under the just-war theory?

Our discussion can best begin with Thomas Hobbes since for Hobbes civil society primarily exists to solve the problems posed by the endemic role of violence in human life. Hobbes thought that violence created such miseries in pre-civil or non-civil conditions (his "state of nature") that reason required men to alienate, almost entirely, their natural right to self-protection in order to set up a sovereign with the sole right of the sword. His solution to the problem posed by the widespread violence of the state of nature is to monopolize the potentiality for violence in one agency.

The phenomena of war and terrorism, in their different ways, challenge this solution. Hobbes's political philosophy faces certain notorious problems, but even were it to provide a local solution to the problem of violence, it would do so at the cost of establishing a proliferation of (almost) absolute sovereign powers. They would very probably confront each other (as Hobbes realized) in a stance of permanent hostility akin to the war of all against all with which his problematic begins. This "anarchy" of the international order thus poses almost intractable difficulties for the peace that Hobbes took to be a primary objective of the laws of nature and for which sovereign power was to provide the guarantee. . . .

For Hobbes, not only is the sovereign power virtually absolute, but it also defines the contours of justice, inasmuch as nothing the sovereign does can be unjust. . . . The sovereign cannot be accused of injustice but may violate the laws of nature and be answerable to God for what Hobbes calls iniquity. Thus the sovereign has certain obligations as a ruler to preserve the peace, and is bound before God to conform to the tenets of natural law. Consequently, many resorts to war would be ruled out on prudential and moral grounds.

Nor are Hobbes's qualifications restricted to the morality of beginning war, for his brief discussions of honor, cruelty, and necessity in war allow some minimal room for moral restrictions on how a war is conducted (Hobbes, 1969: 78). Hobbes's qualifications mirror the twofold division of discussion within the just-war tradition, the first concerned with the morality appropriate to resort to war at all, and the second with the morality that should govern the way a war is fought. The former is often called *jus ad bellum* and the latter *jus in bello.* The Hobbesian mirroring is reductive: the fulsome shape of the *jus ad bellum* appears in the thin form of "providence" (i.e., prudent foresight) and the demanding conditions of the *jus in bello* are reflected as the (largely unspecified) requirements of honor. . . .

THE JUST WAR: *JUS AD BELLUM*

Although it is common to talk of "just-war theory," the mode of thinking thereby indicated is more a broad tradition than a precisely specified intellectual construction. It is less like the theory of the categorical imperative and more like commonsense morality. None the less, certain rules and maxims are invoked and I will begin with a digest of those that are most central to the argument about when it is right to go to war: the *jus ad bellum*.

1. War must be declared and waged by legitimate authority.
2. There must be a just cause for going to war.
3. War must be a last resort.
4. There must be reasonable prospect of success.
5. The violence used must be proportional to the wrong being resisted.

Each of these conditions raises problems. We shall briefly review some of the difficulties with conditions (3)–(5) and then comment more fully on condition (2). Conditions (3) and (5) are specifications of a commonsense understanding of the rational limits to self-defense. Given the ambiguous benefits and definite risks of most uses of violence, and the inherent tendency it has to move beyond control, the idea of "last resort" registers the desirability of a cautious approach to warfare. None the less, the condition cannot require that a nation must resort to war only after it has tried *every* other option. Some of these will be too absurd or counterproductive; others may delay the inevitable to the grave disadvantage of a just cause. Last resort requires the use of imagination and some degree of risk-taking in the search for reasonable alternatives to war, but it does not counsel peace at any price. Hence it will be a matter of practical judgment whether the relevant alternatives to war have been exhausted. Moreover, it should not be forgotten that some of the alternatives to war may have their own serious moral costs, as is illustrated by growing disenchantment with the human costs of certain sorts of sanctions.

The requirement of proportionality spans the *jus ad bellum* and the *jus in bello* and insists that lethal violence should not be employed without consideration of the balance between the evil it brings and the good to be achieved in resisting evil. There is here an element of calculating consequences, but the appeal to proportionality is not full-bloodedly consequentialist. This is because its focus is narrower. We are not asked to consider whether going to war is the best thing for the universe, all things considered, but whether the foreseeable costs of this resort to violence are out of kilter with the criminal behavior it seeks to redress. . . .

Condition 4 is also a reflection of common sense, but at an even more basic level, since it is merely an application to warfare of an apparently fundamental condition of rational action. Normally one is irrational to engage in a plan with little or no perceived prospect of success. Yet there are desperate circumstances in which one may need to act against the odds. The mountain climber who faces disaster from an avalanche may be rational to attempt the leap across a ravine even where he thinks it unlikely he can make it. In the case of war, a fight against the odds may be justifiable where the stakes are very high, as when a powerful enemy is determined not only to conquer but enslave. This seems plausible, but it does not refute condition 4 so much as require a more subtle interpretation of "reasonable." . . . Some would argue that there are circumstances in which a fight to the death is preferable to mere capitulation. This has most plausibility where the enemy is bent upon enslavement or extermination. But some would extend the circumstances further to encompass the symbolic assertion of national honor, as Michael Walzer seems to do in his discussion of Finland's "futile" war of defense against the Soviet Union in 1939–40. What these arguments show is that the concept of "success" is open to complex interpretations. At first blush, one naturally takes it to mean winning the war, but the counterexamples suggest other purposes. None the less, enough crimes have been committed in the name of national honor to warrant a note of caution about self-immolation for its sake.

Condition 2 concerning just cause also has its origins in commonsense intuitions but again its interpretation raises problems. There are differences between the older tradition and much contemporary theory. The medieval tradition of the just war stems primarily from St Augustine and was generally more permissive, . . . Although the ground of self-defense had always loomed large in legitimating resort to war, Aquinas and others had also allowed various "injuries" of a religious nature. Hence, in some circumstances, a war to return heretical peoples to orthodoxy or, even, to conquer heathens was a candidate for a just war. Both Vitoria and Suarez and later Grotius are anxious to limit further such recourse, so it is plausible to see them as standing at the beginning of a move toward a more restrictive attitude to just cause (Grotius, 1925: 516–17, 553–4; Suarez, 1944; Vitoria, 1991). The current ban on "aggressive war" can be seen, for all its obscurity, as the outcome of such a development.

The strength of this ban is also, of course, connected with the rise of the modern state and the doctrine of sovereignty that has accompanied it. . . .

Admittedly, the contemporary abhorrence of "aggression" has critics; moreover, the exact meaning of "aggression" is elusive and open to exploitation. None the less, the moral power of the idea of defense against aggression comes from the moral significance of self-preservation and particularly self-defense. It is not a uniquely modern concept, as Anscombe (1970), for instance, seems to believe since it may be found virtually at any time or place where questions about the legitimacy of war are raised. . . . Moreover, ancient Chinese discussions of the morality of war are specifically concerned to reject the legitimacy of aggressive war, and, although the concept of aggression at work is somewhat different from that enshrined in the UN Charter, it is a recognizable relation (Tzu et al., 1964).

The basic moral intuition draws much of its appeal from the legitimacy of personal resort to self-defense. Hobbes, for instance, treats the legitimacy of self-preservation as the fundamental right of nature. There are certainly problems in extrapolating from the case of an individual to that of a nation-state and in elucidating concepts of national rights, but where the state is clearly defending its people rather than its honor or the power of an elite, then the extension has palpable force. Moreover, it is easy to see the point of some other extensions that have had a place in traditional discussions. If a nation is sometimes entitled to the use of violence in its own defense, then surely other nations may come to its aid as long as their objective is to help repel the attack and no more. This parallels what seems allowed with regard to aid in the case of individuals. Of course, in both the domestic and the international cases, what is abstractly morally permissible is not the whole story. There may be powerful prudential reasons for not helping others defend themselves. When the Soviet Union invaded Hungary and later Czechoslovakia the world stood by, principally because of fear of nuclear war, and those fears were realistic enough at least to make a reasonable case for such agonizing inaction.

Another extension is the idea that a nation may defend against aggression before it has begun. The preemptive war is sometimes defended on the ground that when aggression is genuinely imminent it is rational to strike against the enemy before he gets the advantage of the first blow. There seems to be logical space for this, but it remains worrying. As Sidgwick pointed out, the legitimate pre-emption "easily passes over into anticipation of a blow that is merely feared, not really threatened. Indeed this enlarged right of self-protection against mere danger has often been further extended to justify hostile interference to prevent a neighbour growing strong merely through expansion or coalescence with other states" (Sidgwick, 1898: 101). . . .

How then should we understand "aggression"? The UN Charter defines it as follows: "Aggression is the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State or in any other manner inconsistent with the Charter of the United Nations" (United Nations, 1974). . . . There are three broad types of criticism of the defense against aggression model of just cause. . . .

The first complains that the appeal to aggression is too strong. Sometimes aggression is made to seem as if it obliges those attacked, or their sympathizers, to give a military response. . . . But such insistence ignores the rule of proportionality as illustrated and discussed above, and may well conflict with conditions 3 and 4. At most, defense against aggression satisfies the condition of just cause, but it will only license war if the other conditions are fulfilled.

A second complaint is that the aggression appeal is, in another respect, too weak. This questions modern just-war theory's emphasis upon the central, even unique, role of self-defense, and argues that there are other legitimate causes for war. The basic line of criticism here is that restriction of just wars to *defense against aggression* (even allowing for the extensions discussed above) leaves evils undealt with in the international order. The criticism is put trenchantly by Anscombe: "The present day conception of 'aggression', like so many strongly influential conceptions, is a bad one. Why *must* it be wrong to strike the first blow in a struggle? The only question is, who is in the right?" (Anscombe, 1970: 43–4). As stated, this criticism would not seem to jettison the concept of aggression as dramatically as she supposes since her argument seems to presume the existence of a struggle in which actual blows have not yet been struck, though they or something like them have been extensively prepared for. So some form of aggression (different from the UN model) may have occurred already, or we may be in the area of legitimate preemption discussed earlier.

But a more interesting construal of "the first blow in the struggle" would refer to the aggressive blow that initiates armed conflict. . . . It would encompass the idea of military intervention in another state's affairs in order to remove an awful government or remedy some great internal evil, such as persecution of a minority group. Following current fashion, let us call these many diverse situations "humanitarian wars." These are not philosophers' fantasies, as wars in Uganda, Cambodia, Somalia, and Kosovo have recently shown.

Support for humanitarian warfare strengthened amongst philosophers and other theorists at the end of the twentieth century, though politicians were generally less enthusiastic. Some humanitarian wars are harder than others for the aggression model to handle, but the tendency to return to a more permissive attitude to the just war needs to be treated with wariness. There is a presumption against the moral validity of resort to war given what we know of the history of warfare, of the vast devastation it commonly causes and the dubious motives that have so often fueled it. For these reasons, the development of just-war theory has been progressively away from altruistic legitimations of war. Our experience of wars of religion, of trade and imperialist wars, and of what tends to happen when one nation conquers another "for its own good" speak against allowing expansive accounts of "just cause."

This provides a powerful objection to humanitarian war, but the fact remains that there can be extreme cases that challenge the objection. Walzer treats the Indian invasion of Bangladesh in 1971 as such a case where the intervention was to prevent the massacre of a population by what was nominally its own government. The Vietnamese invasion of Cambodia may be a similar case or the Tanzanian of Uganda, though the histories of those nations since then has been less than happy. Anscombe's example of the use of violence against "the man-stealing business" is another case that has good claims to exception from the ban, though the example is complex because it sometimes involved armed action against criminal groups disowned by their own governments. . . .

A third, related problem with the aggression model is that it sanctifies existing national-state arrangements. Critics ask: why should *these* boundaries and *these* states be given such respect? The question is given added force by the ways in which colonization and decolonization have created states with whimsical boundaries. This is not the place to engage in a full-scale discussion of sovereignty, national determination, nationalism, and the justification for state authority, but we can note two things. One is that any idea of

sovereignty that requires absolute immunity from outside involvement has never made much sense and makes even less in the contemporary world; the second is that sovereignty, however qualified, is still usually perceived as having profoundly positive significance by those subject to it. Hence, outside intrusions, no matter how well intentioned, will often face deep moral and political problems. The case for humanitarian war needs to be very conscious of these drawbacks. . . .

THE *JUS IN BELLO*

Moral restrictions on how one conducts oneself in war are apt to be met with incredulity. "You do what needs to be done to win" is a common response. There is a certain appeal in this pragmatic outlook, but it flies in the face not only of just-war thinking but of many common human responses to war. The concept of an atrocity, for instance, has a deep place in our thinking. Even that very tough warrior, the US war ace General Chuck Yeager suffered genuine moral revulsion at orders to commit "atrocities" that he was given and complied with in World War II. He was especially "not proud" of his part in the indiscriminate strafing of a 50-square-mile area of Germany.

The idea that there are non-legitimate targets amongst "the enemy" is the basis of one of the two primary rules of the *jus in bello:* the principle of discrimination. The other is the principle of proportionality, the operation of which parallels its work in the *jus ad bellum,* for there are questions to be raised both about whether the resort to war is a proportional response to some injury, and whether some tactic or means is proportionate to its projected effect.

A major part of the discrimination principle concerns the immunity of noncombatants from direct attack. This is a key point at which utilitarian approaches to the justification of war tend to part company with the classical just-war tradition. Either they deny that the principle obtains at all, or, more commonly, they argue that it applies in virtue of its utility. The former move is associated with the idea that war is such "hell" and victory so important that everything must be subordinated to that end, but even in utilitarian terms it is unclear that this form of ruthlessness has the best outcomes, especially when it is shared by the opposing sides. Hence, the more common move is to argue that the immunity of noncombatants is a useful rule for restricting the damage wrought by wars. Non-utilitarians (I shall call them "intrinsicalists" because they believe that there are intrinsic wrongs, other than failing to maximize goods) can agree that there are such extrinsic reasons for the immunity rule, but they will see this fact as a significant additional reason to conform to the principle. Intrinsicalists will argue that the principle's validity springs directly from the reasoning that licenses resort to war in the first place. This resort is allowed by the need to resist perpetrators of aggression (or, on the broader view, to deal with wrongdoers) and hence it licenses violence only against those agents. This is the point behind distinguishing combatants from noncombatants, or, in another terminology, wrongdoers and innocents. In this context, when we classify people as noncombatants or innocents we do not mean that they have no evil in their hearts, or lack enthusiasm for their country's policies, nor do we mean that the combatants have such evil or enthusiasm. The classification is concerned with the role the individual plays in the chain of agency directing the aggression or wrongdoing. . . .

But even when these distinctions are made, there seems room not only for doubt about the application of the distinction to various difficult categories of person, such as slave laborers coerced to work in munitions factories, but also its applicability at all to the highly integrated citizenry of modern states. It is surely anachronistic to think of contemporary war as waged between armies; it is really nation against nation, economy against economy, peoples against peoples. But although modern war has many unusual features, its "total" nature is more an imposed construction than a necessary reflection of a changed reality. Even in World War II not every enemy citizen was a combatant. In any war, there remain millions

of people who are not plausibly seen as involved in the enemy's lethal chain of agency. There are, for instance, infants, young children, the elderly and infirm, lots of tradespeople and workers, not to mention dissidents and conscientious objectors. Moreover, the model of total war that underpins this objection is itself outdated. . . .

In fact, there has been a remarkable change on this issue in the strategic doctrine and military outlook of many major powers since the end of the Cold War. It is now common to pay at least lip service to the principle, as evidenced by certain restraint shown during the Gulf War and the bombing of Serbia, and by the widespread condemnation of Russian brutality in Chechnya. The real question is not so much whether it is immoral to target noncombatants (it is), but how "collateral" damage and death to noncombatants can be defended. This was always a problem in just-war theory, often solved by resort to some form of the principle of double effect. This allowed for the harming of noncombatants in some circumstances as a foreseen but unintended side-effect of an otherwise legitimate act of war. The "circumstances" included the proportionality of the side-effect to the intended outcome. Not everyone agrees with the principle (and this is not the place to discuss it in detail) but the conduct of war in contemporary circumstances is morally impossible unless the activities of warriors are allowed to put noncombatants at risk in certain circumstances. Some modification to the immunity principle to allow indirect harming seems to be in line with commonsense morality in other areas of life, and to be necessitated by the circumstances of war. If it is not available, then pacifism, as Holmes (1989: esp. 193–203) has argued, seems the only moral option.

TERRORISM

For a phenomenon that arouses such widespread anxiety, anger, and dismay, terrorism is surprisingly difficult to define. . . . Rather than extensively reviewing the varieties of definition, I propose to concentrate on one key element in common responses to and fears about terrorism, namely the idea that it involves "innocent" victims. This provides a point of connection with the moral apparatus of just-war theory, specifically the principle of discrimination and its requirement of noncombatant immunity. Of course, terrorism does not always take place in the context of all-out international war, but it usually has a war-like dimension. I will define it as follows: "the use of violence to target noncombatants ('innocents' in the *jus in bello* sense) for political purposes."

This definition has several contentious consequences. One is that states can themselves use terrorism, another is that much political violence by non-state agents will not be terrorist. As to the former, there is a tendency, especially amongst the representatives of states, to restrict the possibility of terrorist acts to non-state agents. But if we think of terrorism, in the light of the definition above, as a tactic rather than an ideology, this tendency should be resisted since states can and do use the tactic of attacking the innocent. Some theorists who think terrorism cannot be perpetrated by governments are not so much confused, as operating with a different definition. They define terrorism, somewhat in the spirit of Hobbes, as the use of political violence by non-state agents against the state. Some would restrict it to violence against a democratic state. This is the way many political scientists view terrorism, and, at least in the case of a democratic state, they see it as morally wrong. Call this the political definition to contrast with the tactical definition.

A further consequence of the tactical definition is that it implies a degree of purposiveness that terrorism is thought to lack. Some theorists have claimed that terrorism is essentially "random," others that it is essentially "expressive." In both cases, the claim is that a reference to political purposes is inappropriate. In reply, it can be argued that talk of terrorism as random is generated by the genuine perception that it does not restrict its targets to the obvious military ones, but this does not mean that it is wild and purposeless. Indeed, most terrorists think that the best way to get certain political effects is to aim at

"soft" noncombatant targets. Similarly, there can be no doubt that many terrorist attacks are expressive and symbolic, involving the affirmation of the attitude: "We are still here; take notice of us." Yet the expressive need not exclude the purposive, or even the assertive. "That's a rattle-snake" may express horror, be designed to warn an audience, and state a fact. So terrorist acts can be, and are, both expressive and politically purposive. . . .

The tactical definition faces the problems already discussed concerning the meaning of the term "noncombatant," but even more acutely. In guerilla war, insurgents may not be easily identifiable as combatants and will seek to enlist or involve the villagers and local inhabitants in the campaign thereby blurring their status as noncombatants. On the other hand, many state officials who are not directly prosecuting the campaign against the insurgents may be plausibly viewed as implicated in the grievances the revolutionaries are seeking to redress. There are certainly problems here, but they do not seem insurmountable. In the heat and confusion of battle, it may be difficult and dangerous to treat even children as noncombatants, especially where children are coerced or seduced into combatant roles (as is common in many contemporary conflicts). None the less, a premeditated campaign of bombing regional hospitals to induce civilian lack of cooperation with rebels is in palpable violation of the *jus in bello.* So are the murder of infants and the targeting of state officials, such as water authorities or traffic police, whose roles are usually tangentially related to the causes of the conflict. It is true that some ideologies purport to have enemies so comprehensive as to make even small children and helpless adults into "combatants." Western advocates of "total-war" strategic bombing of cities share with the Islamic fanatics, who incorporate American air travellers and sundry citizens of Manhattan into their holy targets, a simplistic and Manichaean vision of the world that is at odds with the just-war tradition's attempt to bring moral sanity to bear upon the use of political violence.

Is terrorism wrong? Given just-war theory and the tactical definition, the answer is clearly yes. And if one takes the principle of noncombatant immunity to invoke an absolute moral prohibition, as just-war thinkers have commonly done, then it is always wrong. Yet many contemporary moral philosophers, sympathetic to just-war thinking, are wary of moral absolutes. They would treat the prohibition as expressing a very strong moral presumption against terrorism and the targeting of noncombatants, but allow for exceptions in extreme circumstances. So, Michael Walzer thinks that in conditions of "supreme emergency" the violation of the normal immunity is permissible in warfare though only with a heavy burden of remorse (extending even to scapegoating). He thinks the Allied terror bombing of German cities in World War II (in the early stages) was legitimated by the enormity of the Nazi threat. John Rawls has recently endorsed this view while condemning the bombings of Hiroshima and Nagasaki (Walzer, 1992; Rawls, 1999). If this concession is allowed to states, it seems mere consistency to allow it to non-state agents on the same terms. The general reluctance to do so suggests that such categories as "supreme emergency" may mask contestable political judgments.

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Discussion Questions

1. Discuss whether the just-war theory, as explicated by Coady, is applicable in modern society. Analyze the theory in light of the prima facie moral duties and rights discussed in Chapter 1.
2. Discuss whether the United States' preemptive strike against Iraq, and the attacks by Iraqis on the occupying coalition forces, were justified under the just-war theory.
3. Discuss whether a policy of nuclear deterrence is justified under the just-war theory.
4. Applying the *jus in bello* reasoning, discuss whether the use of chemical and biological weapons in self-defense is justified if a country is invaded by another country that has greatly superior military strength.
5. In the September 11 attacks, the terrorists chose targets that symbolized what they regarded as the heresy of globalization, destruction of traditional ways of living, and exploitation of the poor of the world by the rich. Discuss whether targeting symbols of "evil" by groups that lack the power to directly attack the military of a superior force is ever legitimate. How would Coady and a utilitarian each most likely answer this question?

SOHAIL H.HASHMI

Interpreting the Islamic Ethics of War and Peace

Sohail H. Hashmi is professor in the International Relations Program at Mt. Holyoke College. Hashmi reviews the origins of Islamic ethics of war and peace. He then discusses *jihad* in the context of the just-war tradition. Finally, he applies Islamic ethics of *jihad* to current issues such as the killing of civilians during the Iraq War and the possession and use of weapons of mass destruction.

"Interpreting the Islamic Ethics of War and Peace," from *The Ethics of War and Peace,* ed. by Terry Nardin (Princeton: Princeton University Press, 1996), 146–166. Some notes have been omitted.

Critical Reading Questions

1. What is the source of the controversy regarding the concept of *jihad?*
2. What are the primary sources of the ethical discourse in Islam?
3. Who is Ibn Khaldun and what are his views on war and peace?
4. According to the Qur'an, why is humanity prone to war?
5. What is peace (*salam*)?
6. Under what conditions is the use of force sanctioned by Muslim ethics?
7. Is pacifism an acceptable response to oppression in Islamic ethics?
8. What was the prophet Muhammed's view on the use of war and violence?
9. When is nonviolent resistance preferable to armed conflict?
10. What are the four types of war distinguished by Ibn Khaldun? Which wars are legitimate and which ones are illegitimate?
11. What is the Islamic view on the use of war or force to convert nonbelievers?
12. What is the medieval distinction between *dar al-harb* and *dar al-Islam?*
13. What is the modern fundamentalist Islamic view of the role of *jihad* on an international level?
14. What is the basis for *jus in bello* (just conduct of war) and *jus ad bellum* (just waging of a war) in the Qur'an and Islamic ethics?
15. What is the Islamic position on the use of weapons of mass destruction?

Muslim writers of many intellectual persuasions have long argued that Westerners hold an inaccurate, even deliberately distorted, conception of *jihad*. In fact, however, the idea of *jihad* (and the ethics of war and peace generally) has been the subject of an intense and multifaceted debate among Muslims themselves. So diffusely defined and inconsistently applied has the idea become in Islamic discourse that a number of religious opposition groups have felt compelled to differentiate their cause from competing "false" causes by naming themselves, tautologically, "Islamic" *jihad*.

Nevertheless, when the contemporary Islamic discourse on war and peace is studied in the context of recent historical events, including decolonization and the many conflicts in which Muslims have been involved, one can discern an emerging consensus among Muslim intellectuals on the current meaning of *jihad*. This consensus is by no means universal, and given the diffuse nature of religious authority in the Islamic tradition, debate on the ethics of war and peace is likely to continue. But as I hope to demonstrate, the concept of *jihad* in contemporary Islam is one that is still adapting to the radical changes in international relations that have occurred since the medieval theory was first elaborated. We are witnessing a period of reinterpretation and redefinition, one characterized by controversy and confusion about how the concept should be applied to contemporary events, but also by movement toward wider agreement on the essential points of an Islamic ethics of war and peace. . . .

Much of the controversy surrounding the concept of *jihad* among Muslims today emerges from the tension between its legal and ethical dimensions. This tension arises because it is the juristic, and not the philosophical or ethical, literature that has historically defined Muslim discourse on war and peace. With the rise of the legalistic tradition, ethical inquiry became a narrow and secondary concern of Islamic scholarship. What we find from the medieval period are legal treatises propounding the rules of *jihad* and discussing related issues, but few ethical works outlining a framework

of principles derived from the Qur'an and sunna upon which these rules could be based. . . .

CONCEPTIONS OF WAR AND PEACE IN THE QUR'AN

Ibn Khaldun observes in the *Muqaddima,* his celebrated introduction to a history of the world composed at the end of the fourteenth century, that "wars and different kinds of fighting have always occurred in the world since God created it." "War is endemic to human existence," he writes, "something natural among human beings. No nation, and no race is free from it."[1] Ibn Khaldun's brief comment summarizes rather well the traditional Islamic understanding of war as a universal and inevitable aspect of human existence. It is a feature of human society sanctioned, if not willed, by God Himself. The issues of war and peace thus fall within the purview of divine legislation for humanity. Islam, Muslims like to say, is a complete code of life; given the centrality of war to human existence, the moral evaluation of war holds a significant place in Muslim ethical/legal discussion. The Islamic ethics of war and peace is therefore derived from the same general sources upon which Islamic law is based.

The first of these sources, of course, is the Qur'an, which is held by Muslims to be God's final and definitive revelation to humanity. The Qur'anic text, like other revealed scriptures, is not a systematic treatise on ethics or law. It is a discursive commentary on the actions and experiences of the prophet Muhammad, his followers, and his opponents over the course of twenty-three years. But as the Qur'an itself argues in several verses, God's message is not limited to the time and place of its revelation; it is, rather, "a message to all the worlds" (81:27) propounding a moral code with universal applicability (39:41). From this commentary emerge broadly defined ethical principles that have been elaborated throughout Islamic history into what may be termed an Islamic conception of divine creation and man's place in it. In other words, although the Qur'an does not present a systematic ethical argument, it is possible to derive a consistent ethical system from it.

Why is humanity prone to war? The Qur'anic answer unfolds in the course of several verses revealed at various times, the essential points of which may be summarized as follows:

First, man's fundamental nature (*fitra*) is one of moral innocence, that is, freedom from sin. In other words, there is no Islamic equivalent to the notion of "original sin." Moreover, each individual is born with a knowledge of God's commandments, that is, with the essential aspects of righteous behavior. But this moral awareness is eroded as each individual encounters the corrupting influences of human society (30:30).

Second, man's nature is to live on the earth in a state of harmony, and peace with other living things. This is the ultimate import of the responsibility assigned by God to man as His vicegerent (*khalifa*) on this planet (2:30). True peace (*salam*) is therefore not merely an absence of war; it is the elimination of the grounds for strife or conflict, and the resulting waste and corruption (*fasad*) they create. Peace, not war or violence, is God's true purpose for humanity (2:208).

Third, given man's capacity for wrongdoing, there will always be some who *choose* to violate their nature and transgress against God's commandments. Adam becomes fully human only when he chooses to heed Iblis's (Satan's) temptation and disobeys God. As a result of this initial act of disobedience, human beings are expelled from the Garden to dwell on earth as "enemies to each other" (2:36, 7:24). Thus, wars and the evils that stem from them, the Qur'an suggests, are the inevitable consequences of the uniquely human capacity for moral choice.

The Qur'an does not present the fall of man as irrevocable, however, for God quickly returns to Adam to support and guide him (2:37). This, according to Islamic belief, is the beginning of continuous divine revelation to humanity through a series of prophets ending with Muhammad. God's reminders of the laws imprinted upon each human consciousness through His prophets are a manifestation of His endless mercy to His

creation, because all human beings are potential victims of Iblis's guile, that is, potential evildoers, and most human beings are actually quite far from God's laws (36:45–46). When people form social units, they become all the more prone to disobey God's laws through the obstinate persistence in wrongdoing caused by custom and social pressures (2:1.3–1:4, 37:69, 43:22). In this way, the individual drive for power, wealth, prestige, and all the other innumerable human goals becomes amplified. Violence is the inevitable result of the human desire for self-aggrandizement.

Fourth, each prophet encounters opposition from those (always a majority) who persist in their rebellion against God, justifying their actions through various self-delusions. One of the principal characteristics of rejection of God (*kufr*) is the inclination toward violence and oppression, encapsulated by the broad concept *zulm*. When individuals choose to reject divine guidance, either by transgressing against specific divine injunctions or by losing faith altogether, they violate (commit zulm against) their own nature (fitra). . . . When an entire society rejects God, oppression and violence become the norm throughout the society and in relation with other societies as well; the moral anarchy that prevails when human beings abandon the higher moral code derived from faith in a supreme and just Creator, the Qur'an suggests, is fraught with potential and actual violence. . . .

Fifth, peace (salam) is attainable only when beings surrender to God's will and live according to God's laws. This is the condition of *islam,* the conscious decision to acknowledge in faith and conduct the presence and power of God. Because human nature is not sufficiently strong to resist the temptation to evil, it is necessary for man to establish a human agency, that is, a state, to mitigate the effects of anarchy and enforce divine law.

Sixth, because it is unlikely that individuals or societies will ever conform fully to the precepts of Islam, Muslims must always be prepared to fight to preserve the Muslim faith and Muslim principles (8:60, 73). The use of force by the Muslim community is, therefore, sanctioned by God as a necessary response to the existence of evil in the world. As the Qur'an elaborates in an early revelation, the believers are those "who, whenever tyranny afflicts them, defend themselves" (42:39). This theme of the just, God-ordained use of force for legitimate purposes is continued in several other verses. In the first verse that explicitly permits the Muslim community to use armed force against its enemies, the Qur'an makes clear that fighting is a burden imposed upon all believers (not only Muslims) as a result of the enmity harbored by the unbelievers.

> Permission [to fight] is given to those against whom War is being wrongfully waged . . . those who have been driven from their homelands against all right for no other reason than their saying: "Our Sustainer is God!" . . .

A subsequent verse converts this permission to fight into an injunction: The rationale given for using armed force is quite explicit: "Tumult and oppression (*fitna*) is worse than killing" (2:191). These two verses clearly undermine the possibility of an Islamic pacifism. One verse in particular offers an implicit challenge to an ethical position based on the renunciation of all violence: "Fighting is prescribed for you, even though it be hateful to you; but it may well be that you hate something that is in fact good for you, and that you love a thing that is in fact bad for you: and God knows, whereas you do not" (2:216). There is, thus, no equivalent in the Islamic tradition of the continuing debate within Christianity of the possibility of just war: There is no analogue in Islamic texts to Aquinas's Question 40: "Are some wars permissible?" The Islamic discourse on war and peace begins from the a priori assumption that some types of war are permissible—indeed, required by God—and that all other forms of violence are, therefore, forbidden. In short, the Qur'an's attitude toward war and peace may be described as an idealistic realism. Human existence is characterized neither by incessant warfare nor by real peace, but by a continuous tension between the two. Societies exist forever in a precarious balance between them. The unending human challenge *jihad fi sabit Allah* (struggle

in the way of God) [is] to mitigate the possibility of war to strengthen the grounds for peace. . . .

CONCEPTIONS OF WAR AND PEACE IN THE SUNNA

The second source for the Islamic ethics of war and peace is the practice (sunna) of the prophet Muhammad. It is impossible to comprehend the Qur'an without understanding the life of the Prophet and impossible to comprehend the life of the Prophet without understanding the Qur'an. As the Prophet's wife, Aisha bint Abi Bakr, is reported to have said: "His character (*khuluqhu*) was the Qur'an."

Muhammad was born into a milieu characterized by internecine skirmishes (*ghazwa*) among rival tribes. These were seldom more than raids undertaken for petty plunder of a neighboring tribe's flocks. If the conflict had any "higher" purpose, it was usually collective reprisal for an injury or affront suffered by a single member of the tribe: according to the prevailing *lex talionis*. Larger confrontations for higher stakes, such as the actual conquest of territory, were rare, although not unknown. . . . Naturally, tribal loyalty was the cornerstone of this society's ethos, and virtue was often equated with martial valor. It would, however, be incorrect to view pre-Islamic Arab culture as glorifying war. . . . [T]he ghazw'a was often viewed by its participants as a sort of ongoing game, a struggle to outwit the opponent with a minimum of bloodshed. The aim was not to vanquish the foe but to demonstrate the qualities of courage, loyalty, and magnanimity—all components of masculine nobility included in the term *muruwwa*. Implicit in the Arab martial code were "rules of the game" that prohibited, among other things, fighting during certain months, the killing of noncombatants, and unnecessary spoliation. . . .

We can construct an outline of the Prophet's approach to the ethics of war and peace not only by referring to the Qur'an, but also by making use of the large body of literature comprising the Prophet's sayings and actions (*hadith*) and biography (*sira*) compiled between the second and fourth Islamic centuries. It is clear from these records that from an early age, Muhammad was averse to many aspects of the tribal culture in which he was born. In particular, there is no indication that he ever showed any interest in affairs of tribal honor, particularly in the ghazwa. Throughout the Meccan period of his prophetic mission (610–22 C.E.), he showed no inclination toward the use of force in any form, even for self-defense—on the contrary, his policy can only be described as nonviolent resistance. . . . The Prophet insisted throughout this period on the virtues of patience and steadfastness in the face of their opponents' attacks. When the persecution of the most vulnerable Muslims (former slaves and members of Mecca's poorer families) became intense, he directed them to seek refuge in the realm of a Christian king, Abyssinia. The Prophet's rejection of armed struggle during the Meccan period was more than mere prudence based on the Muslims' military weakness. It was, rather, derived from the Qur'an's still unfolding conception that the use of force should be avoided unless it is, in just war parlance, a "last resort." . . .

The requital of evil is an evil similar to it hence, whoever pardons [his enemy] and makes peace, his reward rests with God—for, verily; He does not love evildoers. Yet indeed, as for any who defend themselves after having been wronged—no blame whatever attaches to them: blame attaches but to those who oppress [other] people and behave outrageously on earth, offending against all right: for them is grievous suffering in store! But if one is patient in adversity and forgives, this is indeed the best resolution of affairs (42:40–43).

The main result of these early verses is not to reaffirm the pre-Islamic custom of *lex talionis* but the exact opposite: to establish the moral superiority of forgiveness over revenge. The permission of self-defense is not a call to arms; military force is not mentioned, although neither is it proscribed. Instead, it should be seen as a rejection of quietism, of abnegation of moral responsibility in the face of oppression. Active nonviolent resistance and open defiance of pagan persecution is

the proper Muslim response, according to these verses, and was, in fact, the Prophet's own practice during this period. . . .

THE GROUNDS FOR WAR

Ibn Khaldun continues his discussion of war in the *Muqaddima* by distinguishing four types of war: One arises from petty squabbles among rival foes or neighboring tribes, another from the desire for plunder found among "savage peoples." These two types he labels "illegitimate wars." Then, reflecting the prevailing medieval approach, he divides legitimate wars into two types: *jihad* and wars to suppress internal rebellion. This latter division of legitimate wars is the logical outgrowth of the medieval juristic bifurcation of the world into two spheres, *dar al-Islam* (the realm where Islamic law applied), and *dar al-harb* (the realm of war). According to the Sunni legal schools, *jihad* properly speaking was war waged against unbelievers. Because all Muslims were understood to constitute a single community of believers, wars between Muslim parties were usually classed in a separate category, *fitna* (literally, a "trial" or "test"). Like Plato, who has Socrates declare that Greeks do not make war on one another, the Muslim jurists viewed intra-Muslim disputes as internal strife that should be resolved quickly by the ruling authorities. This approach to war among Muslims, important in medieval theory, has assumed greater significance in modern controversies about the definition of *jihad*.

The descriptions of *jihad* in the medieval texts reflect the historical context in which legal theory was elaborated. Because the medieval juristic conception of *jihad* provided legal justification for the rapid expansion of the Islamic empire that occurred in the decades following the Prophet's death, its connotations are offensive rather than defensive. Relatively little consideration was given to *jihad* defined as "defensive struggle," that is, war undertaken strictly to safeguard Muslim lives and property from external aggression. It was considered obvious that Muslims may wage war in self-defense, according to the Qur'anic verses cited earlier. This defensive war was *fard 'ayn,* a moral duty of each able-bodied Muslim, male or female.

More detailed discussion of *jihad* comes in the context of offensive struggles aimed at expansion of Islamic hegemony, an expansion aimed ultimately at the universal propagation of Islam. In the twelfth century, Ibn Rushd (Averroes) wrote a legal treatise that deals at some length with the conditions of *jihad*.[2] . . .

Because the ultimate end of *jihad* is the propagation of the Islamic faith, not material gain or territorial conquest, Ibn Rushd, like other medieval writers, implicitly, if not always explicitly, separates the grounds for *jihad* from the grounds for war (harb or qitai). Because Islam is viewed as a universal mission to all humanity, *jihad* is the perpetual condition that prevails between dar al-Islam and dar al-harb. Participation in the *jihad* to overcome dar al-harb was a *fard kifaya,* a moral obligation only for those capable of assuming it, namely able-bodied and financially secure adult males. Actual war arose only as the final step in a "ladder of escalation." The first step in any contact between the Muslim state and a foreign power was an invitation to allow the peaceful preaching of Islam. This was consonant with the practice of the Prophet, who allegedly had sent letters to the rulers of Byzantium, Iran, and Egypt for precisely this purpose. If a foreign ruler refused this invitation, he was to be offered the incorporation of his people into the Islamic realm as a protected non-Muslim community governed by its own religious laws, but obliged to pay a tax, the *jizya,* in lieu of performing military service. Only if the non-Muslims refused these conditions were there grounds for active hostilities. At this point, the Muslim ruler was not only permitted but required to wage war against them. . . .

As Ibn Rushd's discussion makes apparent, the medieval juristic literature is characterized by fundamental disagreements on the grounds for war. But most of the legal scholars agree that the object of *jihad* is not the forcible conversion of unbelievers to the Islamic faith. This object would contradict several clear Qur'anic statements enjoining freedom of worship, including "Let there be no compulsion in religion; the truth stands out clearly

from error" (2:256), and "If your Lord had so willed, all those who are on earth would have believed: you then compel mankind, against their will, to believe?" (10:99). . . . The object of *jihad* is generally held by these writers to be the subjugation of hostile powers who refuse to permit the preaching of Islam, not forcible conversion. Once under Muslim rule, they reason, non-Muslims will be free to consider the merits of Islam. The medieval theory of an on-going *jihad,* and the bifurcation of the world into dar al-Islam and dar al-harb upon which it was predicated, became a fiction soon after it was elaborated by medieval writers. . . . Nevertheless, the idea that "Islam" and the "West" represented monolithic and mutually antagonistic civilizations underlay much Muslim and European writing, particularly during the heyday of European imperialism in the eighteenth and nineteenth centuries. Shades of this viewpoint are very much apparent in our own day.

In his discussion of recent Muslim thinking on the grounds for *jihad,* Bassam ubi outlines two contending approaches, the "conformist" and the "fundamentalist." He suggests that the reinterpretation of the medieval theory of *jihad* by modernists (as the conformists are more commonly known) is half-hearted and that, in the end, it is the fundamentalists' resurrection of the medieval dar al-harb/dar al-Islam distinction that best characterizes the current Muslim view of international relations generally and issues of war and peace in particular. . . . Although the Qur'an's division of mankind into believers and unbelievers lends support for such a view, modernist writers argue that the Qur'anic verses cannot be interpreted to suggest a perpetual state of war between the two, nor any territoriality to the "house of Islam," when these verses are taken in the full context of the Qur'anic message. In one of the leading modernist expositions of Islam international law, Mohammad Talaat al-Ghunaimi dismisses the dar al-Islam/dar al-harb distinction as an idea introduced by certain medieval legal thinkers in response to their own historical circumstances, but having no basis in Islamic ethics. . . .

With the emergence of postcolonial Muslim states, political legitimacy and the rights of the people in the face of oppressive regimes have emerged as central issues in Islamic discourse. These issues figure prominently, of course, in all fundamentalist literature. Fundamentalists view themselves as a vanguard of the righteous, preparing the way for the elimination of jahili values from their societies and the establishment of a just "Islamic" order. . . . What is clear from these works is the view, supported by experience, that the secular, nationalist regimes ruling most Muslim countries today, backed by their Western supporters, will not willingly cede power, even if the majority of the population does not support them. They will maintain power by any means, including the violent repression of dissent. In other words, it is argued that these regimes have declared war on Islam within their countries, and that it is incumbent upon all true believers to respond by whatever means are necessary, including violence, to overthrow them. The fundamentalist writings are therefore focused on combating the social and international oppression that they believe face the Muslim community (*umma*) everywhere. *Jihad* is for the fundamentalists an instrument for the realization of political and social justice in their own societies, a powerful tool for internal reform and one required by the Qur'an's command that Muslims "enjoin the right and forbid the wrong" (3:104). The thrust of the modern *jihad* is thus very much inward. Warfare on the international level is considered only to the extent that Western governments are viewed as archenemies who impose corrupt and authoritarian regimes upon Muslims. *Jihad* as an instrument for the imposition of Islamic rule in non-Muslim states today hardly figures in fundamentalist works. That goal has been postponed indefinitely, given the fundamentalist position, which they share with many other Muslim writers, that most of the Muslim countries themselves do not at present have Islamic governments.

One area in which modernists and fundamentalists are tending to converge is upon the argument that *jihad* is an instrument for enforcing human rights. For example, the Iranian revolutionary leader Ayatollah Murtaza Mutahhari argues that "the most sacred form of *jihad* and war

is that which is fought in defense of humanity and of human rights."[3] Similarly, the Indian/Pakistani scholar Maulana Abu al-A'la Mawdudi writes that *jihad* is obligatory for Muslims when hostile forces threaten their human rights, which in his analysis includes forcibly evicting them from their homes, tampering with their social order, and obstructing religious life.[4] To some extent these arguments are a response to Western writings on the international protection of human rights. But it is interesting to note that whereas there is continuing debate in the West on the legality of humanitarian intervention against sovereign states, continuing ambivalence toward the territorial state in Islamic thought lends weight to the argument in favor of such intervention among a broad range of Muslim writers.

THE CONDUCT OF WAR

Because the goal of *jihad* is the call to Islam, not territorial conquest or plunder, the right conduct of Muslim armies has traditionally been an important concern within Islam. The Qur'an provides the basis for *ius in bello* considerations: "And fight in God's cause against those who wage war against you, but do not transgress limits, for God loves not the transgressors" (2:190). The "limits" are enumerated in the practice of the Prophet and the first four caliphs. According to authoritative traditions, whenever the Prophet sent out a military force, he would instruct its commander to adhere to certain restraints. . . .

Do not act treacherously; do not act disloyally; do not act neglectfully. Do not mutilate; do not kill little children or old men, or women; do not cut off the heads of the palm-trees or burn them; do not cut down the fruit trees; do not slaughter a sheep or a cow or a camel, except for food. You will pass by people who devote their lives in cloisters; leave them and their devotions alone. You will come upon people who bring you platters in which are various sorts of food; if you eat any of it, mention the name of God over it.

Thus, the Qur'an and the actions of the Prophet and his successors established the principles of discrimination and proportionality of means. . . . In addition, the jurists also dealt with the traditional concerns of ius in bello: the definition and protection of noncombatants and restrictions on certain types of weapon. The legal discussions address three issues: Who is subject to damage in war? What types of damage may be inflicted upon persons? What types of damage may be inflicted upon their property? Underlying the differing opinions on these issues once again are the apparent contradictions between the peace verses and the sword verses. . . .

In current Muslim discourse on war and peace, ius in bello issues receive very little attention. This is true despite the vast changes that have occurred in both the international law and the technology of warfare. The discussion that does occur is usually undertaken by modernists seeking to reinterpret the Qur'an and sunna so that Islamic injunctions correspond to current international practice. . . . More contemporary issues, such as the definition of noncombatant immunity and the use of terrorist methods by some Islamic groups have yet to be treated systematically.

Far more relevant and interesting discussion of right conduct in war occurs in the context of specific conflicts. During the "war of the cities" toward the end of the Iran-Iraq War, for example, Mehdi Bazargan and the Liberation Movement of Iran (LMI) repeatedly protested that Khomeini was violating Islamic prohibitions against targeting civilians when he authorized missile strikes against Baghdad in retaliation for Iraq's Scud missile attacks against Teheran. In one "open letter" to Khomeini, the IMI wrote:

According to Islam, it is justifiable retribution only if we, with our own missiles, hit the commanders or senders of the Iraqi missiles rather than hitting civilian areas and killing innocent people and turning their homes and communities into ghost towns and hills of rubble, all in the name of striking military targets.

. . . ius in bello rather than ius ad bellum concerns dominated Muslim debates on the ethics of the conflict. Among the points raised by opponents of the anti-Iraq coalition's policies was that

the conflict should be treated as fitna, that is, a dispute among Muslims. The rules concerning fitna developed by medieval jurists do not permit Muslims to ally themselves with non-Muslims, particularly when military decision-making is in non-Muslim hands. The prohibition was based on the belief that unbelievers would not apply the stricter code of conduct incumbent upon Muslims when fighting other Muslims. Critics of the Gulf War have argued that the conduct of the war by the coalition validates the medieval jurists' concerns. The massive air bombardment of Iraq's governmental and industrial facilities, they charge, was disproportionate to the Iraqi provocation and insufficiently discriminated between military and civilian targets. Moreover, the slaughter of Iraqi troops fleeing Kuwait City on the "highway of death" directly contravened one of the central points of Islamic law, namely that the goal of all military campaigns against other Muslims should be to rehabilitate and not to annihilate the transgressing party.

The most glaring area of neglect in contemporary Islamic analyses of ius in bello concerns weapons of mass destruction. So far, no systematic work has been done by Muslim scholars on how nuclear, chemical, and biological weapons relate to the Islamic ethics of war. This is an astonishing fact in light of the development of nuclear technology by several Muslim countries and the repeated use of chemical weapons by Iraq. In discussing the issue with several leading Muslim specialists in international law, I have found a great deal of ambivalence on the subject. Most scholars cite the Qur'anic verse "Hence, make ready against them whatever force and war mounts you are able to muster, so that you might deter thereby the enemies of God" (8:60) as justification for developing nuclear weaponry. Muslims must acquire nuclear weapons, I have been repeatedly told, because their enemies have introduced such weapons into their arsenals. There is unanimous agreement that Muslims should think of nuclear weapons only as a deterrent and that they should be used only as a second strike weapon. But Islamic discussion of this topic remains at a very superficial level. There is little appreciation of the logistics of nuclear deterrence and of the moral difficulties to which a deterrence strategy gives rise.

CONCLUSION

Is the Islamic *jihad* the same as the Western just war? The answer, of course, depends upon who is defining the concepts. But after this brief survey of the debates that have historically surrounded the Islamic approach to war and peace and the controversies that are continuing to this day, I think it is safe to conclude that even though *jihad* may not be identical to the just war as it has evolved in the West, the similarities between Western and Islamic thinking on war and peace are far more numerous than the differences.

. . . *Jihad,* like just war, is grounded in the belief that intersocietal relations should be peaceful, not marred by constant and destructive warfare. The surest way for human beings to realize this peace is for them to obey the divine law that is imprinted on the human conscience and therefore accessible to everyone, believers and unbelievers. . . . No war was *jihad* unless it was undertaken with right intent and as a last resort, and declared by right authority. Most Muslims today disavow the duty to propagate Islam by force and limit *jihad* to self-defense. And finally, *jihad,* like just war, places strict limitations on legitimate targets during war and demands that belligerents use the least amount of force necessary to achieve the swift cessation of hostilities. Both *jihad* and just war are dynamic concepts, still evolving and adapting to changing international realities. As Muslims continue to interpret the Islamic ethics of war and peace, their debates on *jihad* will, I believe, increasingly parallel the Western debates on just war. And as Muslims and non-Muslims continue their recently begun dialogue on the just international order, they may well find a level of agreement on the ethics of war and peace that will ultimately be reflected in a revised and more universal law of war and peace.

NOTES

1. Ibn Khaldun, *The Muqaddimah: An Introduction to History,* trans. Franz Rosenthal (Princeton: Princeton University Press, 1967), 2:73.
2. Ibn Rushd, *Bidayat al-mujtahid,* in Rudolph Peters, ed. and trans., Jihad, in *Medieval and Modern Islam* (Leiden: E. J. Brill, 1977), 9–25.
3. Ayatollah Murtaza Mutahhari, "Defense: The Essence of Jihad," in Mehdi Abedi and Gary Legenhausen, eds., *Jihad and Shahadat: Struggle and Martyrdom in Islam* (Houston: Institute for Research and Islamic Studies, 1986), 105.
4. Abu al-A'la Mawdudi, *Al-Jihad fi'l-Islam* (Lahore: Idara Tarjuman al-Qur'an, 1988), 55–56.

Discussion Questions

1. Compare and contrast the Islamic ethics of war and peace with the Judeo-Christian just-war tradition. Discuss what a cultural relativist, a natural law ethicist, and/or a deontologist would each make of the similarities and differences.
2. What is the difference between nonviolent resistance and pacifism, and why is the first justified under Islamic ethics, but not the second? Support your answer.
3. In 2001 Islamic terrorists crashed two airplanes into the World Trade Center, killing thousands, including themselves. Many Muslims regard suicide bombers as contrary to God's law and Muhammed's teachings. Others regard suicide bombers as martyrs and suicide bombing as a legitimate form of self-defense.[12] Discuss the moral validity of these two positions in light of the Islamic teachings on war.
4. Discuss what course of action an Islamic ethicist would most likely suggest for the Muslim world to take in response to Hitler's program of exterminating the Jews during World War II. Support your answer.

JONATHAN GRANOFF

Nuclear Weapons, Ethics, Morals, and Law

Attorney Jonathan Granoff is a member of the Lawyers Alliance for World Security and president of the Global Security Institute. In this article, Granoff argues that the possession of nuclear weapons by several modern states not only violates the principle of equality, but also shows a lack of respect for human life. Citing international court rulings regarding the legitimacy of nuclear weapons for the purpose of deterrence, he concludes that we should work toward the elimination of nuclear weapons.

"Nuclear Weapons, Ethics, Morals and Law," presented to the *Nuclear Non-Proliferation Prepcom of 1999* and *The Hague Appeal for Peace,* May 1999. Some notes have been omitted.

Critical Reading Questions

1. According to Granoff, what is the foundation of ethical norms?
2. What are some universal moral norms that are relevant to the debate on nuclear weapons?
3. What is the relationship between ethical values and law?
4. How do nuclear weapons run contrary to the rules of humanitarian law?
5. What is the policy of nuclear deterrence and how do proponents justify it?
6. On what moral grounds do Judge Weeramantry and other members of the International Court reject the reasoning behind nuclear deterrence?
7. What solution does Granoff propose for the elimination of nuclear weapons?

ETHICAL AND MORAL FRAMEWORK FOR ADDRESSING THE ISSUE

In his concurrence with the historic opinion of the International Court of Justice (ICJ) issued July 8, 1996, addressing the legal status of the threat or use of nuclear weapons,[1] Judge Ranjeva stated, "On the great issues of mankind the requirements of positive law and of ethics make common cause, and nuclear weapons, because of their destructive effects, are one such issue."[2] Human society has ethical and moral norms based on wisdom, conscience and practicality. Many norms are universal and have withstood the test of human experience over long periods of time. One such principle is that of reciprocity. It is often called the Golden Rule: "Treat others as you wish to be treated." It is an ethical and moral foundation for all the world's major religions.

Several modern states sincerely believe that this principle can be abrogated and security obtained by the threat of massive destruction. The Canberra Commission highlighted the impracticality of this posture: "Nuclear weapons are held by a handful of states which insist that these weapons provide unique security benefits, and yet reserve uniquely to themselves the right to own them. This situation is highly discriminatory and thus unstable; it cannot be sustained. The possession of nuclear weapons by any state is a constant stimulus to other states to acquire them."

The solution can be stated simply: "States should treat others as they wish to be treated in return."

It is inconsistent with moral wisdom and practical common sense for a few states to violate this ancient and universally valid principle of reciprocity. Such moral myopia has a corrosive effect on the law which gains its respect largely through moral coherence. Can global security be obtained while rejecting wisdom universally recognized for thousands of years?

Judge Weeramantry said, "[E]quality of all those who are subject to a legal system is central to its integrity and legitimacy. So it is with the body of principles constituting the corpus of international law. Least of all can there be one law for the powerful and another law for the rest. No domestic system would accept such a principle, nor can any international system which is premised on a concept of equality."[3]

LAW AND VALUES

Law is the articulation of values. Values must be based on moral foundations to have credibility. The recognition of the intrinsic sacredness of life and the duty of states and individuals to protect life is a fundamental characteristic of all human civilized values. Such civilized values are expressed in humanitarian law and custom which has an ancient lineage reaching back thousands of years. "They were worked out in many civilizations—Chinese, Indian, Greek, Roman, Japanese, Islamic, modern European among others." Humanitarian law "is an ever continuous

development. . . . (and) grows as the sufferings of war keep escalating. With a nuclear weapon, those sufferings reach a limit situation, beyond which all else is academic."[4] . . .

We must never forget the awesome destructive power of these devices. "Nuclear weapons have the potential to destroy the entire ecosystem of the planet. Those already in the world's arsenals have the potential of destroying life on the planet several times over."[5]

Not only are they destructive in magnitude but in horror as well.

Notwithstanding this knowledge we permit ourselves to continue to live in a "kind of suspended sentence. For half a century now these terrifying weapons of mass destruction have formed part of the human condition. Nuclear weapons have entered into all calculations, all scenarios, all plans. Since Hiroshima, on the morning of 6 August 1945, fear has gradually become man's first nature. His life on earth has taken on the aspect of what the Qur'an calls 'long nocturnal journey', a nightmare whose end he cannot yet foresee."[6]

Attempting to obtain ultimate security through the ultimate weapon, we have failed, for "the proliferation of nuclear weapons has still not been brought under control, despite the existence of the Non-Proliferation Treaty. Fear and folly may still link hands at any moment to perform a final dance of death. Humanity is all the more vulnerable today for being capable of mass producing nuclear missiles."[7] . . .

A five megaton weapon represents greater explosive power than all the bombs used in World War II and a twenty megaton bomb more than all the explosives used in all the wars in history. Several states are currently poised ready to deliver weapons that render those used in Hiroshima and Nagasaki small. One megaton bomb represents the explosive force of approximately seventy Hiroshimas while a fifteen megaton bomb a thousand Hiroshimas. Judge Weeramantry emphasized that "the unprecedented magnitude of its destructive power is only one of the unique features of the bomb. It is unique in its uncontainability in both space and time. It is unique as a source of peril to the human future. It is unique as a source of continuing danger to human health, even long after its use. Its infringement of humanitarian law goes beyond its being a weapon of mass destruction, to reasons which penetrate far deeper into the core of humanitarian law."[8]

We are challenged as never before: technology continues to slip away from moral guidance and law chases after common sense.

INTERNATIONAL COURT OF JUSTICE

When the International Court of Justice addressed the legal status of threat or use of nuclear weapons members of the nuclear club, which has since grown, asserted a principled reliance on nuclear weapons. The Court held that "the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable to armed conflict, and in particular the principles and rules of humanitarian law" and that states are obligated to bring to a conclusion negotiations on nuclear disarmament in all its aspects. . . .

The Court stated unequivocally that the rules of armed conflict, including humanitarian law, prohibit the use of any weapon that is likely to cause unnecessary suffering to combatants; that is incapable of distinguishing between civilian and military targets; that violates principles protecting neutral states (such as through fallout or nuclear winter); that is not a proportional response to an attack; or that does permanent damage to the environment.

Under no circumstance may states make civilians the object of attack nor can they use weapons that are incapable of distinguishing between civilian and military targets. Regardless of whether the survival of a state acting in self defense is at stake, these limitations continue to hold.

For this reason the President Judge stated in forceful terms that the Court's inability to go beyond its statement "can in no manner be interpreted to mean that it is leaving the door ajar to the recognition of the legality of the threat or use of nuclear weapons."[9] He emphasized his point

by stating that nuclear weapons are "the ultimate evil, destabilize humanitarian law which is the law of the lesser evil. Thus the very existence of nuclear weapons is a great challenge to humanitarian law itself." . . .

The Court said, "[M]ethods and means of warfare, which would preclude any distinction between civilian and military targets, or which would result in unnecessary suffering to combatants, are prohibited. In view of the unique characteristics of nuclear weapons . . . the use of such weapons in fact seems scarcely reconcilable with respect to such requirements."

Discordance between the incompatibility of these devices with the requirements of humanitarian law, the assertion that there could be possible instances in which their use could be legal and the reliance on the doctrine of deterrence compelled the Court to seek a resolution: "the long promised complete nuclear disarmament appears to be the most appropriate means of achieving that result." The requirements of moral coherence and ethical conduct and the need for "international law, and with it the stability of international order which it is intended to govern," drive the imperative of nuclear disarmament.

ONGOING PROBLEM

Legal and moral questions continue to loom before us. We are not faced with nuclear policies founded on a strategy of dropping depth charges in mid-ocean or bombs in the desert. What the world faces is nuclear deterrence with its reliance on the horrific destruction of vast numbers of innocent people, destruction of the environment rendering it hostile to generations yet to be blessed with life.

Deterrence proponents claim that nuclear weapons are not so much instruments for the waging of war but political instruments "intended to prevent war by depriving it of any possible rationale."[10] The United States has boldly argued that because deterrence is believed to be essential to its international security that the threat or use of nuclear weapons must therefore be legal. The United States representative stated: "If these weapons could not lawfully be used in individual or collective self defense under any circumstances there would be no credible threat of such use in response to aggression and deterrent policies would be futile and meaningless. In this sense, it is impossible to separate the policy of deterrence from the legality of the use of the means of deterrence. Accordingly, any affirmation of a general prohibition on the use of nuclear weapons would be directly contrary to one of the fundamental premises of the national security policy of each of these many states."[11]

It is clear that deterrence is designed to threaten massive destruction which would most certainly violate numerous principles of humanitarian law. Additionally, it strikes at generations yet unborn.

Even in the instance of retaliation the moral absurdity challenges us. As Mexico's Ambassador Sergio Gonzalez Galvez told the Court, "Torture is not a permissible response to torture. Nor is mass rape acceptable retaliation to mass rape. Just as unacceptable is retaliatory deterrence—'You burnt my city, I will burn yours.'"[12]

Professor Eric David, on behalf of the Solomon Islands, stated, "If the dispatch of a nuclear weapon causes a million deaths, retaliation with another nuclear weapon which will also cause a million deaths will perhaps protect the sovereignty of the state suffering the first strike, and will perhaps satisfy the victim's desire for revenge, but it will not satisfy humanitarian law, which will have been breached not once but twice; and two wrongs do not make a right."[13]

Judge Weeramantry rigorously analyzed deterrence theory:

1. Intention: "Deterrence needs to carry the conviction to other parties that there is a real intention to use those weapons in the event of an attack by that other party. A game of bluff does not convey that intention, for it is difficult to persuade another of one's intention unless one really has that intention. Deterrence thus consists in a real

intention to use such weapons. If deterrence is to operate, it leaves the world of make believe and enters the field of seriously intended military threats."[14]

2. Deterrence and Mere Possession: "Deterrence is more than the mere accumulation of weapons in a storehouse. It means the possession of weapons in a state of readiness for actual use. This means the linkage of weapons ready for immediate take off, with a command and control system geared for immediate action. It means that weapons are attached to delivery vehicles. It means that personnel are ready night and day to render them operational at a moment's notice. There is clearly a vast difference between weapons stocked in a warehouse and weapons so ready for immediate action. Mere possession and deterrence are thus concepts which are clearly distinguishable from each other."[15]

For deterrence to work one must have the resolve to cause the resulting damage and devastation. . . .

While deterrence continues to place all life on the planet in a precarious position of high risk, one must wonder whether it provides any possible security against accidental or unauthorized launches, computer error, irrational rogue actions, terrorist attack, criminal syndicate utilization of weapons and other irrational and unpredictable, but likely, scenarios.

Did the Court undermine the continued legitimacy of deterrence? The Court stated clearly that "if the use of force itself in a given case is illegal—for whatever reason—the threat to use such force will likewise be illegal."[16]

The moral position of the nuclear weapons states is essentially that the threat to commit an illegal act—massive destruction of innocent people—is legal because it is so horrible to contemplate that it ensures the peace. Thus the argument is that the threat of committing that which is patently illegal is made legal by its own intrinsic illogic. . . .

An unambiguous political commitment by the nuclear weapon states to the elimination of nuclear weapons evidenced by unambiguous immediate pledges never to use them first as well as placing the weapons in a de-alerted posture pending their ultimate elimination will promptly evidence the good faith efforts by the nuclear weapon states to reduce our collective risks. These steps increase our collective security, but are hardly enough to meet the clear decision of the court and the dictates of reason. Only commencement in good faith of multilateral negotiations leading to elimination of these devices will bring law, morals, ethics and reason into coherence. Only then will we be able to tell our children that ultimate violence will not bring ultimate security, a culture of peace based on law, reason and values will. . . .

NOTES

1. Legality of the Threat or Use of Nuclear Weapons, General List No. 95 (Advisory Opinion of the International Court of Justice of July 8, 1996). Unless otherwise noted, references are to this opinion, which was requested by the General Assembly.
2. Opinion of Judge Ranjeva, para. 105(2)E1.
3. Opinion of Judge Weeramantry, V4.
4. Ibid., I 5.
5. Opinion of Judge Weeramantry, II 3(a).
6. Opinion of President Judge Bedjaoui, para. 2.
7. Ibid., para. 5.
8. Opinion of Judge Weeramantry, II para. 3.
9. Opinion of President Judge Badjaoui, para. 20.
10. Marc Perrinde Brichambaut, France, Verbatim record (trans.), 1 November 1995, p. 33.
11. Michael Matheson, US, Verbatim record, 15 November 1995, p. 78.
12. Verbatim record, 3 November 1995, p. 64.
13. Verbatim record (trans.), 14 November 1995, p. 45.
14. Opinion of Judge Weeramantry, VII 2(v).
15. Ibid.
16. Para. 47.

Discussion Questions

1. Discuss whether the possession of nuclear weapons and the strategy of deterrence can be justified under just-war theory as explicated by Aquinas and Coady.
2. India and Pakistan, both nations with nuclear weapons, have more than once been on the brink of war. Discuss how the United Nations and the United States should respond, if at all, to the threat of nuclear war between the two nations.
3. Discuss whether the mere possession (or suspicion) of weapons of mass destruction by a country, such as Iran, that is a potential threat to another country justifies a preemptive strike. Support your answer, using specific examples.
4. Was the dropping of nuclear bombs on Hiroshima and Nagasaki in World War II an example of war or of terrorism? Was the bombing of these two cities morally justified? Discuss how Granoff and a just-war theorist would each answer this question.
5. President Obama says it's time to rid the world of nuclear weapons. However, he also says he will not commit to the United States' giving up nuclear weapons until other countries do so. Is this position reasonable? Working in small groups, develop a policy for helping Obama rid the world of nuclear weapons.

DAVID LUBAN

The War on Terrorism and the End of Human Rights

David Luban is a professor of law and philosophy at Georgetown University Law Center. In his reading he notes that the United States government, in its war on terrorism, has blurred the line between the law model and the war model approaches by denying terrorist suspects the protections of either model. Luban concludes that because of this the war on terrorism may seriously erode international human rights.

Critical Reading Questions

1. What is the model of war and the model of law? What are the advantages and disadvantages of each model?
2. What is the hybrid war–law approach and why, according to Luban, did Washington adopt it?
3. What is the legal status of terrorist suspects imprisoned at Guantanamo Bay, and what rights do they have under the hybrid war–law model?

David Luban, "The War on Terrorism and the End of Human Rights," in *War After September 11,* ed. Verna V. Gehring (Lanham, MD: Rowman & Littlefield Publishers, 2003), 51–62.

4. What is the source of the term "enemy combatant" and how does the hybrid war–law model go beyond the original meaning of the term?
5. What is the argument against the hybrid war–law model?
6. According to Luban, how does the war on terrorism threaten international human rights?
7. How does the war on terrorism differ from other kinds of wars?
8. According to Luban, how has the war on terrorism been used by governments as a model to justify attacks on insurgents?

In the immediate aftermath of September 11, President Bush stated that the perpetrators of the deed would be brought to justice. Soon afterwards, the President announced that the United States would engage in a war on terrorism. The first of these statements adopts the familiar language of criminal law and criminal justice. It treats the September 11 attacks as horrific crimes—mass murders—and the government's mission as apprehending and punishing the surviving planners and conspirators for their roles in the crimes. The War on Terrorism is a different proposition, however, and a different model of governmental action—not law but war. Most obviously, it dramatically broadens the scope of action, because now terrorists who knew nothing about September 11 have been earmarked as enemies. But that is only the beginning.

THE HYBRID WAR–LAW APPROACH

The model of war offers much freer rein than that of law, and therein lies its appeal in the wake of 9/11. First, in war but not in law it is permissible to use lethal force on enemy troops regardless of their degree of personal involvement with the adversary. The conscripted cook is as legitimate a target as the enemy general. Second, in war but not in law "collateral damage," that is, foreseen but unintended killing of non-combatants, is permissible. (Police cannot blow up an apartment building full of people because a murderer is inside, but an air force can bomb the building if it contains a military target.) Third, the requirements of evidence and proof are drastically weaker in war than in criminal justice. Soldiers do not need proof beyond a reasonable doubt, or even proof by a preponderance of evidence, that someone is an enemy soldier before firing on him or capturing and imprisoning him. They don't need proof at all, merely plausible intelligence. Thus, the U.S. military remains regretful but unapologetic about its January 2002 attack on the Afghani town of Uruzgan, in which 21 innocent civilians were killed, based on faulty intelligence that they were al Qaeda fighters. Fourth, in war one can attack an enemy without concern over whether he has done anything. Legitimate targets are those who in the course of combat *might* harm us, not those who *have* harmed us. No doubt there are other significant differences as well. But the basic point should be clear: given Washington's mandate to eliminate the danger of future 9/11s, so far as humanly possible, the model of war offers important advantages over the model of law.

There are disadvantages as well. Most obviously, in war but not in law, fighting back is a *legitimate* response of the enemy. Second, when nations fight a war, other nations may opt for neutrality. Third, because fighting back is legitimate, in war the enemy soldier deserves special regard once he is rendered harmless through injury or surrender. It is impermissible to punish him for his role in fighting the war. Nor can he be harshly interrogated after he is captured. The Third Geneva Convention provides: "Prisoners of war who refuse to answer [questions] may not be threatened, insulted, or exposed to unpleasant or disadvantageous treatment of any kind." And, when the war concludes, the enemy soldier must be repatriated.

Here, however, Washington has different ideas, designed to eliminate these tactical disadvantages in the traditional war model. Washington regards international terrorism not only as a military adversary, but also as a criminal activity and criminal conspiracy. In the law model, criminals don't get to shoot back, and their acts of violence subject them to legitimate punishment. That is what we see in Washington's prosecution of the War on Terrorism. Captured terrorists may be tried before military or civilian tribunals, and shooting back at Americans, including American troops, is a federal crime (for a statute under which John Walker Lindh was indicted criminalizes anyone regardless of nationality, who "outside the United States attempts to kill, or engages in a conspiracy to kill, a national of the United States" or "engages in physical violence with intent to cause serious bodily injury to a national of the United States; or with the result that serious bodily injury is caused to a national of the United States"). Furthermore, the U.S. may rightly demand that other countries not be neutral about murder and terrorism. Unlike the war model, a nation may insist that those who are not with us in fighting murder and terror are against us, because by not joining our operations they are providing a safe haven for terrorists or their bank accounts. By selectively combining elements of the war model and elements of the law model, Washington is able to maximize its own ability to mobilize lethal force against terrorists while eliminating most traditional rights of a military adversary, as well as the rights of innocent bystanders caught in the crossfire.

A LIMBO OF RIGHTLESSNESS

The legal status of al Qaeda suspects imprisoned at the Guantanamo Bay Naval Base in Cuba is emblematic of this hybrid war–law approach to the threat of terrorism. In line with the war model, they lack the usual rights of criminal suspects—the presumption of innocence, the right to a hearing to determine guilt, the opportunity to prove that the authorities have grabbed the wrong man. But, in line with the law model, they are considered *unlawful* combatants. Because they are not uniformed forces, they lack the rights of prisoners of war and are liable to criminal punishment. Initially, the American government declared that the Guantanamo Bay prisoners have no rights under the Geneva Conventions. In the face of international protests, Washington quickly backpedaled and announced that the Guantanamo Bay prisoners would indeed be treated as decently as POWs—but it also made clear that the prisoners have no right to such treatment. Neither criminal suspects nor POWs, neither fish nor fowl, they inhabit a limbo of rightlessness. Secretary of Defense Rumsfeld's assertion that the U.S. may continue to detain them even if they are acquitted by a military tribunal dramatizes the point.

To understand how extraordinary their status is, consider an analogy. Suppose that Washington declares a War on Organized Crime. Troops are dispatched to Sicily, and a number of Mafiosi are seized, brought to Guantanamo Bay, and imprisoned without a hearing for the indefinite future, maybe the rest of their lives. They are accused of no crimes, because their capture is based not on what they have done but on what they might do. After all, to become "made" they took oaths of obedience to the bad guys. Seizing them accords with the war model: they are enemy foot soldiers. But they are foot soldiers out of uniform; they lack a "fixed distinctive emblem," in the words of The Hague Convention. That makes them unlawful combatants, so they lack the rights of POWs. They may object that it is only a unilateral declaration by the American President that has turned them into combatants in the first place—he called it a war, they didn't—and that, since they do not regard themselves as literal foot soldiers it never occurred to them to wear a fixed distinctive emblem. They have a point. It seems too easy for the President to divest anyone in the world of rights and liberty simply by announcing that the U.S. is at war with them and then declaring them unlawful combatants if they resist. But, in the hybrid war–law model, they protest in vain.

Consider another example. In January 2002, U.S. forces in Bosnia seized five Algerians and a Yemeni suspected of al Qaeda connections and took them to Guantanamo Bay. The six had been jailed in Bosnia, but a Bosnian court released them for lack of evidence, and the Bosnian Human Rights Chamber issued an injunction that four of them be allowed to remain in the country pending further legal proceedings. The Human Rights Chamber, ironically, was created under U.S. auspices in the Dayton peace accords, and it was designed specifically to protect against treatment like this. Ruth Wedgwood, a well-known international law scholar at Yale and a member of the Council on Foreign Relations, defended the Bosnian seizure in war-model terms. "I think we would simply argue this was a matter of self-defense. One of the fundamental rules of military law is that you have a right ultimately to act in self-defense. And if these folks were actively plotting to blow up the U.S. embassy, they should be considered combatants and captured as combatants in a war." Notice that Professor Wedgwood argues in terms of what the men seized in Bosnia were *planning to do,* not what they *did;* notice as well that the decision of the Bosnian court that there was insufficient evidence does not matter. These are characteristics of the war model.

More recently, two American citizens alleged to be al Qaeda operatives (Jose Padilla, a.k.a. Abdullah al Muhajir, and Yasser Esam Hamdi) have been held in American military prisons, with no crimes charged, no opportunity to consult counsel, and no hearing. The President described Padilla as "a bad man" who aimed to build a nuclear "dirty" bomb and use it against America; and the Justice Department has classified both men as "enemy combatants" who may be held indefinitely. Yet, as military law expert Gary Solis points out, "Until now, as used by the attorney general, the term 'enemy combatant' appeared nowhere in U.S. criminal law, international law or in the law of war." The phrase comes from the 1942 Supreme Court case *Ex parte Quirin,* but all the Court says there is that "an enemy combatant who without uniform comes secretly through the lines for the purpose of waging war by destruction of life or property" would "not . . . be entitled to the status of prisoner of war, but . . . [they would] be offenders against the law of war subject to trial and punishment by military tribunals." For the Court, in other words, the status of a person as a non-uniformed enemy combatant makes him a criminal rather than a warrior, and determines *where* he is tried (in a military, rather than a civilian, tribunal) but not *whether* he is tried. Far from authorizing open-ended confinement, *Ex parte Quirin* presupposes that criminals are entitled to hearings: without a hearing how can suspects prove that the government made a mistake? *Quirin* embeds the concept of "enemy combatant" firmly in the law model. In the war model, by contrast, POWs may be detained without a hearing until hostilities are over. But POWs were captured in uniform, and only their undoubted identity as enemy soldiers justifies such open-ended custody. Apparently, Hamdi and Padilla will get the worst of both models—open-ended custody with no trial, like POWs, but no certainty beyond the U.S. government's say-so that they really are "bad men." This is the hybrid war–law model. It combines the *Quirin* category of "enemy combatant without uniform," used in the law model to justify a military trial, with the war model's practice of indefinite confinement with no trial at all.

THE CASE FOR THE HYBRID APPROACH

Is there any justification for the hybrid war–law model, which so drastically diminishes the rights of the enemy? An argument can be offered along the following lines. In ordinary cases of war among states, enemy soldiers may well be morally and politically innocent. Many of them are conscripts, and those who aren't do not necessarily endorse the state policies they are fighting to defend. But enemy soldiers in the War on Terrorism are, by definition, those who have embarked on a path of terrorism. They are neither morally

nor politically innocent. Their sworn aim—"Death to America!"—is to create more 9/11s. In this respect, they are much more akin to criminal conspirators than to conscript soldiers. Terrorists will fight as soldiers when they must, and metamorphose into mass murderers when they can.

Furthermore, suicide terrorists pose a special, unique danger. Ordinary criminals do not target innocent bystanders. They may be willing to kill them if necessary, but bystanders enjoy at least some measure of security because they are not primary targets. Not so with terrorists, who aim to kill as many innocent people as possible. Likewise, innocent bystanders are protected from ordinary criminals by whatever deterrent force the threat of punishment and the risk of getting killed in the act of committing a crime offer. For a suicide bomber, neither of these threats is a deterrent at all—after all, for the suicide bomber one of the hallmarks of a *successful* operation is that he winds up dead at day's end. Given the unique and heightened danger that suicide terrorists pose, a stronger response that grants potential terrorists fewer rights may be justified. Add to this the danger that terrorists may come to possess weapons of mass destruction, including nuclear devices in suitcases. Under circumstances of such dire menace, it is appropriate to treat terrorists as though they embody the most dangerous aspects of both warriors and criminals. That is the basis of the hybrid war–law model.

THE CASE AGAINST EXPEDIENCY

The argument against the hybrid war–law model is equally clear. The U.S. has simply chosen the bits of the law model and the bits of the war model that are most convenient for American interests, and ignored the rest. The model abolishes the rights of potential enemies (and their innocent shields) by fiat—not for reasons of moral or legal principle, but solely because the U.S. does not want them to have rights. The more rights they have, the more risk they pose. But Americans' urgent desire to minimize our risks doesn't make other people's rights disappear. Calling our policy a War on Terrorism obscures this point.

The theoretical basis of the objection is that the law model and the war model each comes as a package, with a kind of intellectual integrity. The law model grows out of relationships within states, while the war model arises from relationships between states. The law model imputes a ground-level community of values to those subject to the law—paradigmatically, citizens of a state, but also visitors and foreigners who choose to engage in conduct that affects a state. Only because law imputes shared basic values to the community can a state condemn the conduct of criminals and inflict punishment on them. Criminals deserve condemnation and punishment because their conduct violates norms that we are entitled to count on their sharing. But, for the same reason—the imputed community of values—those subject to the law ordinarily enjoy a presumption of innocence and an expectation of safety. The government cannot simply grab them and confine them without making sure they have broken the law, nor can it condemn them without due process for ensuring that it has the right person, nor can it knowingly place bystanders in mortal peril in the course of fighting crime. They are our fellows, and the community should protect them just as it protects us. The same imputed community of values that justifies condemnation and punishment creates rights to due care and due process.

War is different. War is the ultimate acknowledgement that human beings do not live in a single community with shared norms. If their norms conflict enough, communities pose a physical danger to each other, and nothing can safeguard a community against its enemies except force of arms. That makes enemy soldiers legitimate targets; but it makes our soldiers legitimate targets as well, and, once the enemy no longer poses a danger, he should be immune from punishment, because if he has fought cleanly he has violated no norms that we are entitled to presume he honors. Our norms are, after all, *our* norms, not his.

Because the law model and war model come as conceptual packages, it is unprincipled to wrench

them apart and recombine them simply because it is in America's interest to do so. To declare that Americans can fight enemies with the latitude of warriors, but if the enemies fight back they are not warriors but criminals, amounts to a kind of heads-I-win-tails-you-lose international morality in which whatever it takes to reduce American risk, no matter what the cost to others, turns out to be justified. This, in brief, is the criticism of the hybrid war–law model.

To be sure, the law model could be made to incorporate the war model merely by rewriting a handful of statutes. Congress could enact laws permitting imprisonment or execution of persons who pose a significant threat of terrorism whether or not they have already done anything wrong. The standard of evidence could be set low and the requirement of a hearing eliminated. Finally, Congress could authorize the use of lethal force against terrorists regardless of the danger to innocent bystanders, and it could immunize officials from lawsuits or prosecution by victims of collateral damage. Such statutes would violate the Constitution, but the Constitution could be amended to incorporate anti-terrorist exceptions to the Fourth, Fifth, and Sixth Amendments. In the end, we would have a system of law that includes all the essential features of the war model.

It would, however, be a system that imprisons people for their intentions rather than their actions, and that offers the innocent few protections against mistaken detention or inadvertent death through collateral damage. Gone are the principles that people should never be punished for their thoughts, only for their deeds, and that innocent people must be protected rather than injured by their own government. In that sense, at any rate, repackaging war as law seems merely cosmetic, because it replaces the ideal of law as a protector of rights with the more problematic goal of protecting some innocent people by sacrificing others. The hypothetical legislation incorporates war into law only by making law as partisan and ruthless as war. It no longer resembles law as Americans generally understand it.

THE THREAT TO INTERNATIONAL HUMAN RIGHTS

In the War on Terrorism, what becomes of international human rights? It seems beyond dispute that the war model poses a threat to international human rights, because honoring human rights is neither practically possible nor theoretically required during war. Combatants are legitimate targets; noncombatants maimed by accident or mistake are regarded as collateral damage rather than victims of atrocities; cases of mistaken identity get killed or confined without a hearing because combat conditions preclude due process. To be sure, the laws of war specify minimum human rights, but these are far less robust than rights in peace-time—and the hybrid war–law model reduces this schedule of rights even further by classifying the enemy as unlawful combatants.

One striking example of the erosion of human rights is tolerance of torture. It should be recalled that a 1995 al Qaeda plot to bomb eleven U.S. airliners was thwarted by information tortured out of a Pakistani suspect by the Philippine police—an eerie real-life version of the familiar philosophical thought-experiment. The *Washington Post* reports that since September 11 the U.S. has engaged in the summary transfer of dozens of terrorism suspects to countries where they will be interrogated under torture. But it isn't just the United States that has proven willing to tolerate torture for security reasons. Last December, the Swedish government snatched a suspected Islamic extremist to whom it had previously granted political asylum, and the same day had him transferred to Egypt, where Amnesty International reports that he has been tortured to the point where he walks only with difficulty. Sweden is not, to say the least, a traditionally hard-line nation on human rights issues. None of this international transportation is lawful—indeed, it violates international treaty obligations under the Convention against Torture that in the U.S. have constitutional status as "supreme Law of the Land"—but that may not matter under the war model, in which even constitutional rights may be abrogated.

It is natural to suggest that this suspension of human rights is an exceptional emergency measure to deal with an unprecedented threat. This raises the question of how long human rights will remain suspended. When will the war be over?

Here, the chief problem is that the War on Terrorism is not like any other kind of war. The enemy, Terrorism, is not a territorial state or nation or government. There is no opposite number to negotiate with. There is no one on the other side to call a truce or declare a ceasefire, no one among the enemy authorized to surrender. In traditional wars among states, the war aim is, as Clausewitz argued, to impose one state's political will on another's. The *aim* of the war is not to kill the enemy—killing the enemy is the *means* used to achieve the real end, which is to force capitulation. In the War on Terrorism, no capitulation is possible. That means that the real aim of the war is, quite simply, to kill or capture all of the terrorists—to keep on killing and killing, capturing and capturing, until they are all gone.

Of course, no one expects that terrorism will ever disappear completely. Everyone understands that new anti-American extremists, new terrorists, will always arise and always be available for recruitment and deployment. Everyone understands that even if al Qaeda is destroyed or decapitated, other groups, with other leaders, will arise in its place. It follows, then, that the War on Terrorism will be a war that can only be abandoned, never concluded. The War has no natural resting point, no moment of victory or finality. It requires a mission of killing and capturing, in territories all over the globe, that will go on in perpetuity. It follows as well that the suspension of human rights implicit in the hybrid war–law model is not temporary but permanent.

Perhaps with this fear in mind, Congressional authorization of President Bush's military campaign limits its scope to those responsible for September 11 and their sponsors. But the War on Terrorism has taken on a life of its own that makes the Congressional authorization little more than a technicality. Because of the threat of nuclear terror, the American leadership actively debates a war on Iraq regardless of whether Iraq was implicated in September 11; and the President's yoking of Iraq, Iran, and North Korea into a single axis of evil because they back terror suggests that the War on Terrorism might eventually encompass all these nations. If the U.S. ever unearths tangible evidence that any of these countries is harboring or abetting terrorists with weapons of mass destruction, there can be little doubt that Congress will support military action. So too, Russia invokes the American War on Terrorism to justify its attacks on Chechen rebels, China uses it to deflect criticisms of its campaign against Uighur separatists, and Israeli Prime Minister Sharon explicitly links military actions against Palestinian insurgents to the American War on Terrorism. No doubt there is political opportunism at work in some or all of these efforts to piggyback onto America's campaign, but the opportunity would not exist if "War on Terrorism" were merely the code-name of a discrete, neatly-boxed American operation. Instead, the War on Terrorism has become a model of politics, a world-view with its own distinctive premises and consequences. As I have argued, it includes a new model of state action, the hybrid war–law model, which depresses human rights from their peace-time standard to the war-time standard, and indeed even further. So long as it continues, the War on Terrorism means the end of human rights, at least for those near enough to be touched by the fire of battle.

Discussion Questions

1. Apply the just-war theory to the war on terrorism. Can the hybrid war–law model be justified under just-law theory?
2. In January 2009 President Obama issued an executive order closing Guantanamo Bay and suspending military trials of several of the inmates while the judicial process

is under review. Although the order was never carried out, it is consistent with an earlier U.S. Court of Appeals ruling that overturned the Bush administration's policy that prisoners being held at Guantanamo are "enemy combatants" being held on foreign soil and hence have no rights to a lawyer under U.S. law. Discuss whether terrorist suspects should be entitled to due process under the American legal system in light of Luban's distinction between the war model and the law model.

3. Some of the prisoners who have since been released from Guantanamo Bay describe how they were kept in two-meter-long cages and interrogated up to sixty times a day. Should the captives who were released receive restitution from the United States government for wrongful imprisonment? Support your answer.
4. Discuss what a rights ethicist, such as John Locke or Ayn Rand, would most likely think about the morality of the hybrid war–law model.
5. Following the September 11 attacks, the United States adopted a policy that permits preemptive war as self-defense. "It's a different world," argued Colin Powell in favor of the policy. "It's a new kind of threat." Weapons of mass destruction, new technology, and the ease with which global terrorist groups can network have increased the likelihood of surprise attacks. Discuss whether these developments justify preemptive strikes as self-defense under the just-war tradition. If so, discuss under what conditions would a preemptive strike be morally justified.

BRIAN MICHAEL JENKINS

Should Our Arsenal against Terrorism Include Assassination?

Brian Michael Jenkins is one of the world's leading authorities on terrorism and transportation security. He has served as an advisor to the U.S. Department of State and the U.S. Department of Defense. He is currently senior advisor to the president of the Rand Corporation. In the following article, Jenkins examines the arguments both for and against political assassinations and concludes that assassination should not be part of America's arsenal.

Critical Reading Questions

1. What are the five arguments in favor of assassination?
2. What are the ten arguments Jenkins presents against assassination?

Should Our Arsenal against Terrorism Include Assassination? (Santa Monica, CA: The RAND Corporation, 1987).

3. What are some of the examples Jenkins uses to support the position that assassination is morally wrong?
4. Under what conditions do some people think assassination might be morally justified and how does Jenkins respond to their arguments?
5. On what grounds does Jenkins conclude that assassination cannot be morally justified?

PREFACE

Among the countermeasures that the United States might employ against terrorists, why not assassination? Do we deny ourselves an effective instrument simply because terrorists do not fit neatly into our traditional methods of law enforcement or waging war? The following essay examines the arguments for and against assassination as a means of combatting terrorism. . . .

The word slithered out on the mahogany table like a poisonous snake: *Assassination!* A word hissed rather than spoken. I was irritated at the person who brought it up, fortunately not one of the high-ranking government officials was present at the meeting. True, we were meeting in the wake of yet another terrorist outrage in which Americans had been killed. We were supposed to be having a cool discussion of policy, but still there was anger in the room when we spoke about the terrorists. . . .

There is right and wrong, and there is good and evil. This man reminded us that we were supposed to be the good guys. In the darkest moment of despair, I never feared that terrorists would triumph. In the long run, they fail. We will survive. But would we always manage to remain the good guys? Should we?

In the years that have passed since that meeting, terrorists have inflicted more outrages. Indiscriminate attacks have grown more common. As terrorism has become bloodier, the "gun 'em down, string 'em up" school of counterterrorism has understandably gained strength. Assassination is back on the table. The United States must reconsider its prohibition against assassination, advises one terrorist expert speaking on television. "We should have killed the Ayatollah," says another. Muamar Qadaffi should have been killed long ago, he adds.

These exhortations are not without a certain resonance on the part of the American public. In a public opinion poll conducted just before the U.S. raid on Libya, 61 percent of the respondents agreed that the United States should "covertly assassinate known terrorist leaders."

Assassination has a certain emotional appeal for people who are frightened, frustrated, angry. . . .

Behind the rhetoric, there is a legitimate analytical question: In responding to terrorism, can we minimize the loss of life–the lives of future victims of terrorism as well as the lives of innocent bystanders who might be killed in a conventional military response–by killing those who most directly influence their behavior? Why not assassination? Is it right? And would it work? . . .

Here are five arguments in favor of assassination and ten arguments against assassination as a means of combatting terrorism.

IN FAVOR OF ASSASSINATION

1. *Assassination may preclude greater evil.* "Wouldn't you have assassinated Adolf Hitler?" proponents often ask. With hindsight, that's easy. The answer is, "Yes, of course." The more difficult question is, When? After 1941, when Germany declared war on the United States? After 1939, when World War II began? If before then, on the basis of what criteria? Because he was a fascist,

a ruthless megalomaniac, a rabid racist who persecuted Jews, annexed Austria, invaded Czechoslovakia? He was and he did all of these things. But how do we identify future Hitlers? Megalomania, racism, and a proclivity to invade one's neighbor, regrettably, are not rare attributes among world leaders.

2. *Assassination produces fewer casualties than retaliation with conventional weapons.* No doubt about it. Thousands have died as a result of conventional military operations ranging from aerial bombings to full-scale invasions in response to terrorist attacks. Putting aside the question of whether a campaign of assassination would preclude the necessity of all conventional military operations, if blood is the measure, assassination is surely the cleanest form of warfare. (One has to be careful here. An assassination can also lead to wider conflict as it did in 1914.)
3. *Assassination would be aimed at the persons directly responsible for terrorist attacks, not innocent bystanders.* In the U.S. attack on Libya, 37 people died. Were all 37 responsible for the Libyan terrorist campaign that provoked the attack? Were any? Clearly, some casualties were inflicted upon innocent civilian bystanders. Military force, even with "precision weapons," is a blunt instrument. Assassination can be much more precise.
4. *Assassination of terrorist leaders would disrupt terrorist groups more than any other form of attack.* This is probably the best argument for assassination. . . .

The elimination of a terrorist group's leader or leaders causes confusion and disarray. Often terrorist groups are led by a single charismatic and organizationally effective individual who cannot easily be replaced. If he has left no clear successor, his heirs may fight for the number one position. They may anyway, and in a group of violence-prone men and women, it is likely to be a violent struggle. If those responsible for his killing have not been identified, some in the group may suspect a rival faction or a traitor inside. Mutual suspicion will increase. Security precautions will be tightened; communications will become more difficult. "Foreign relations"—the contacts and deals with governments and other groups, which are often the personal domain of the leader himself—will be interrupted. All this will lower the group's operational efficiency, at least temporarily.

It is a different story if the target of assassination is the head of a state sponsoring terrorism. National governments can more easily repair the damages of lost leadership than terrorist groups, but in the Middle East, where authoritarian rule prevails, the elimination of one leader might have considerable effect. . . .

5. *Assassination leaves no prisoners to become causes for further terrorist attacks.* . . . The release of imprisoned terrorists is the most frequent goal in hostage situations and the terrorists' second most important objective after publicity. The apprehension and imprisonment of terrorist leaders make virtually certain that further acts of violence will occur.

AGAINST ASSASSINATION

Lining up against these arguments in favor of assassination are moral and legal constraints, operational difficulties, and practical considerations.

1. *Assassination is morally wrong.* Admittedly, an arguable point. The actions of terrorists also are morally wrong—not that this makes assassination right. But at the very least, many people would *view* assassination as immoral. Take the following example.

Judging by the bumper stickers and T-shirts one sees, more than a few Americans would be happy to see Qadaffi eliminated. Not since the Ayatollah during the hostage crisis in Iran, perhaps not since Adolf Hitler, has any single leader aroused more personal animosity. But just imagine the President appearing on television one evening to announce, "Some time ago I authorized

the assassination of Muamar Qadaffi. I am pleased to report to you tonight that American agents have successfully carried out this mission." Without entering into a philosophical debate, let me assert that a large number of Americans would find such a spectacle morally repugnant. . . .

2. *Assassination is illegal.* Assassination, synonymous with murder, is by definition an illegal act. But advocates of assassination do not view such killings as murder; they may argue that assassinations fall into the same category as executions—the legal taking of human life. "Execution," however, is not an appropriate parallel, since under the circumstances likely to prevail, assassinations would certainly violate American standards of due process.

Other proponents may argue that eliminating terrorist leaders is an act of war. Most terrorists regard themselves as being at war with their enemies, and haven't we "declared war" on terrorism? Does that not put terrorists in the same category as soldiers in an army at war and therefore legitimate targets? The answer is no. We do not accept the terrorists' pretension. We do not consider terrorist attacks as acts of war; and we do not treat captured terrorists as prisoners of war; we try them as criminals. . . . Even a formal declaration of war would not automatically legalize assassination. . . .

Following revelations in the mid-1970s that the U.S. government had been involved in various plots to assassinate foreign leaders, the President issued an Executive Order: "No person employed or acting on behalf of the United States Government shall engage in, or conspire to engage in assassination." Reasons of State will be no defense against a murder charge. Proponents of assassination argue that this is a self-imposed constraint. The President could lift his ban. That might provide legal protection for our hired assassin here in the United States, but it would not protect him against murder charges in other countries, nor would it protect the United States against the wrath of other governments.

Assassinating the terrorist leaders of most concern to us means going into another sovereign country and killing someone. Americans would react angrily if British agents began gunning down IRA fundraisers on the streets of New York and Boston. And suppose Nicaraguan agents were sent to assassinate the leader of the Contras in Washington? The merit of their case makes little difference. We'd charge them with murder. . . .

3. *In combatting terrorism, we ought not to employ actions indistinguishable from those of the terrorists themselves.* We oppose terrorism not because we always oppose the causes espoused by the terrorists or reject the grievances they claim as their motive, and not because we in all cases consider armed force unjustified. We are, after all, a nation founded upon armed rebellion. We oppose terrorism because we believe that bombs in airports and restaurants, the taking of hostages, assassinations on city streets are illegitimate means of fighting in any circumstances. State sponsored terrorism—governments conspiring in such activities—causes and deserves outrage.

Our goal is not just to outgun the terrorists but to defeat, or at least limit, terrorism. We do not further that goal by resorting to terrorist tactics ourselves. . . .

4. *Assassination of terrorists could justify further terrorist actions against us.* Suppose we did adopt assassination as a countermeasure, killing off terrorist leaders and their sponsors one by one. And suppose that in response to this campaign, terrorists launched a campaign to assassinate American diplomats, perhaps our political leaders at home. Could we cry foul? Or would the world simply see it as another phase of a dirty war, fought with tactics we have agreed to.
5. *Our opponents would have the advantage.* Terrorist leaders worry about their security all the time. They are elusive, hard to find, hard to get at. Our intelligence about terrorist

groups is admittedly inadequate. If we can't plant an informant inside a group, how are we going to get someone into the right place at the right time to kill its leader?

In contrast, we are particularly vulnerable to the risk that our own leaders may be assassinated. We would agonize over each operation. Our opponents would not hesitate. We would worry about the possible danger to bystanders. Opponents who set off bombs in airports and department stores have no such concerns. In a war of assassination, clearly we would be at a disadvantage.

6. *The replacement for the person we kill may be even worse.* This is the direct counter to the principal argument in favor of assassination. One reason assassination of terrorists has not worked over the long run is that the elimination of one man simply leads to his replacement by another in the chain of command. We cannot assume that new leaders will act differently from their predecessors. . . .
7. *Whom do we kill?* Colonel Qadaffi and the Ayatollah Khomeini have already been mentioned. Many suspect that Syrian President Hafez Assad plays an even greater role behind the scenes. And U.S. government officials have on occasion accused Cuba and Nicaragua of sponsoring terrorism. That adds Fidel Castro, whom we tried to assassinate 25 years ago, and Daniel Ortega. Ten years ago, Cuban terrorists, reportedly in the employ of the Chilean secret services, assassinated a former Chilean cabinet minister in Washington. Do we then add to our list Chilean President Pinochet, who a short while ago narrowly escaped a local assassination attempt? These people might make up ***our*** list. Other nations would have their own priorities.

When it comes to the assassination of heads of state, one might argue that the elimination of a dozen or so of the more reprehensible potentates each generation might on the average raise standards of international behavior. It would, however, also establish a precedent. We live in a world in which Aldo Moro, Anwar Sadat, and Indira Gandhi fell to the bullets of assassins. Pope John Paul II and Ronald Reagan survived assassination attempts, although in Reagan's case, not by a terrorist. Margaret Thatcher narrowly missed being killed by an IRA bomb. Expanding the practice would hardly contribute to world stability.

8. *Who gives the order?* Not an easy question to answer. During World War II, the United States cracked the code used by the Japanese. In 1943, an intercepted message informed us that Admiral Yamamoto, the commander of the Japanese fleet, was going on a personal inspection tour that would put him within range of American fighters. Should we shoot him down? Why not? We were at war. Yamamoto was a soldier, not a head of state. We shot down Japanese aircraft whenever we could; but knowing who was on the plane somehow made it different. If you can put a name on the bullet, you are in a different business. . . .

Whether seen in the context of peace or war, there is an understandable reluctance to assume responsibility for the cold-blooded killing of a specific person, as opposed to shooting at an anonymous enemy. That pushes the decision up. The higher the rank of the target, the higher the decision must go. It took Golda Meir, the Prime Minister of Israel, to authorize the killing of the Palestinian terrorist leaders. This also was seen as war. . . .

9. *Assassins may have their own agendas.* Assassination is a nasty business, and it often requires employing nasty people, not the suave, urbane, romantic agents of the movies. Any assassinations we might realistically contemplate would most likely take place in North Africa or the Middle East, where the United States has limited operational capabilities. We would have to rely on third parties whose political agendas and attitudes about violence might differ from our own.

In Vietnam, "special targeting"—another of those euphemisms—was carried out by Provincial Reconnaissance Units who had a reputation for "fierce aggressiveness." . . .

The Mafia helped us immensely during World War II, one former CIA agent told me years later, but by the 1960s, they weren't what they used to be. Another former intelligence man offered a more intriguing explanation that had nothing to do with the Mafia's expertise but rather concerned us. We failed because there were too many doubts on our part, he explained. . . .

10. *In the long run, it doesn't work.* Following the bloody attack on Israeli athletes at the Munich Olympics in 1972, Israel embarked upon a campaign of assassination. Between October 1972 and 1974, 11 known or suspected leaders of Palestinian terrorist organizations were shot down or blown up by Israeli agents. The campaign ended after the killing of an innocent waiter in Norway who was mistakenly identified as a terrorist on the list. The assassinations may have disrupted terrorist operations, but the effects were temporary. It was difficult to discern any decline in Palestinian terrorist attacks at the time, and Israelis and Jews worldwide are still frequent targets of terrorist violence. But, since we cannot count things that don't occur, we have no way of knowing how many more attacks would have taken place had Israel not engaged in assassination.

Suppose we could know. Suppose, through the testimony of some terrorist leader, we learned that the assassinations had disrupted or deterred a campaign of terrorist attacks that would have resulted in scores of casualties. Would that make it right? Does a favorable kill ratio change the moral equation? Under such circumstances, do we better serve humanity by ***not*** killing the terrorists? A disturbing question. Uncertainty gives us a way out of the dilemma. In real life, we can seldom predict the effects that an assassination might have.

As a former soldier, I accept the fact that sometimes blood may be spilt in the name of one's country. Military force cannot be ruled out as a possible response to terrorism. Combatting terrorism will at times require aggressive covert operations in which there are going to be casualties—commando assaults on terrorist training camps, for example. The death of a terrorist leader as a consequence of an attack causes fewer qualms. There is still a crucial difference between a covert military operation within a framework of war and assassination—the coldblooded selection and the killing of a specific individual.

Assassination is a slogan, not a solution. Easy to say, tough sounding. A macho posture meant for the media: simple, seductive, full of promise, like any good TV commercial. Endless efforts to gather intelligence, tireless police work, countermeasures that are necessary but often pedestrian, difficult diplomacy, hard policy choices, rewarded with occasional unheralded victories, these—not paper pistols—make up the enterprise of counterterrorism.

One learns never to say "never." Being at war, openly engaged in military hostilities, perhaps would make a difference, although this country historically has taken the position that all is not fair even in war. Short of war, however, "assassination has no place in America's arsenal." The quote comes from a report written more than ten years ago by a Senate Committee investigating U.S. involvement in assassination plots. It was a conclusion supported by the CIA'directors who testified before the committee. It has been reiterated by every President since. And for good reason.

Discussion Questions

1. Working in small groups, evaluate Jenkins's arguments both for and against assassination in light of the current "war on terrorism." Based on your conclusion, develop a policy regarding the use of assassination as a political tool. Discuss your policy with the class and modify it, if appropriate, based on feedback from the class.

2. One of the arguments Jenkins uses against assassination is that the great majority of Americans would find it morally repugnant. However, according to a Gallup Poll taken the day after the assassination of Osama bin Laden, 93 percent of Americans approved of the military action that killed him. Discuss whether this weakens Jenkins's argument against assassination.
3. Would the world be better off if Hitler had been assassinated? Critically analyze Jenkins's argument against the assassination of tyrants such as Hitler.
4. Senator Ron Paul called for the impeachment of President Obama following the assassination of American-born al Qaeda leader Anwar al-Awlaki. Paul argues that the assassination of an American citizen without charge or trial is a move down the slippery slope toward tyranny and a violation of the U.S. Constitution. (See Case Study 5) Critically analyze Paul's argument in light of Jenkins's arguments for and against assassination.

STEPHEN JOEL TRACHTENBERG

Sharing the Burden

Stephen Joel Trachtenberg is the former president of George Washington University and professor emeritus of public administration. Prior to going onto academia, he was an attorney with the U.S. Atomic Energy Commission. Trachtenberg favors conscription, or some type of national service program, on the grounds that sharing the burden of defending the nation promotes equality, national unity, and a better understanding of the military.

Critical Reading Questions

1. Why did some colleges oppose ROTC on their campuses during the Vietnam War, and why does Trachtenberg call this reaction to the war a "false equation"?
2. What is the value of pluralism in America, and why does Trachtenberg think we need a counterbalance to pluralism?
3. How would conscription or national service both strengthen pluralism and promote a common vision at the same time?
4. What does Trachtenberg mean when he says that conscription would give us "a better understanding of the military and military activity"?
5. What is the value in having "citizen-soldiers" rather than simply a professional military?
6. What are some of Trachtenberg's suggestions for implementing a national service?

From Stephen Joel Trachtenberg, "Share the Burden or Fob It Off?" *The World & I,* November 2003. WorldandIJournal.com.

It was in 1970, I think, that a university—its name is not important—got very mad at the Government of the United States. It was unhappy because of the war in Vietnam and decided to do something about it. So the faculty convened and voted to invite the Army ROTC [Reserve Officers Training Corps] program off campus. I hasten to point out, for the historical record, that their vote did not bring an end to that unhappy war on the spot. . . .

The vote equated a reserve officers training program at a liberal arts institution with fighting a hated war. It is a false equation—as, in fact, the failure to end the war by withdrawing from ROTC by nearly all elite colleges and universities amply demonstrated. But it is worse than false; it is harmful. It confuses the issues at hand and devalues the idea of national service. Reinstating ROTC programs at colleges and universities should be one step toward remedying the problem I am discussing here.

Let me put this in a contemporary context. The war in Iraq—and before that, in Afghanistan—has focused our national attention more sharply on war than it has been in many years, perhaps since Vietnam. I am not, however, referring to the debate about the right or the wrong of this war, and I am not even addressing the obvious valor and competence of the men and women in our armed forces. I am thinking of New York Congressman Charles Rangel's proposal to restore Selective Service—the draft. . . .

. . . I think the idea of national service can be—indeed will be—transformational. I say this because I think national service, particularly military service, could address some profound issues.

I will offer three for your consideration. They are: We need a good counterbalance to our healthy respect for pluralism; we need a greater understanding across our entire population of what the military is and does; and we need to make sure that we are protected by citizen-soldiers.

About pluralism: Given our heterogeneous backgrounds, it is not surprising that there have always been some powerful centrifugal forces in America. We are aware of being, in the old phrase, "hyphenated Americans," and many of us still retain the hyphen along with a secondary identity.

But generally, in the course of our history, we have been predominantly American, no matter where we, or our parents or grandparents, came from; the word after the hyphen—American—carried the greater meaning. . . .

Now add to this the high value we place on multiculturalism—a comparatively new idea in our society—which encourages the blooming of many flowers. Factor in the desire of many new arrivals to this country never to forget the life and culture of the old country, as some of the earlier arrivals did to their sorrow. Then add in the "identity politics," by which almost any group of more than eight people can acquire not just an identity according to race, ethnicity, or whatever, but a grievance or a perceived and separate set of rights to go with it. And just for good measure, add in all the recent debates about affirmative action, diversity, and representation. Don't shake well, however; this is a very volatile mixture.

When you combine all these ingredients you realize that the package of things we all knew about and shared in common has been ripped open. The shared and cohesive vision of what America is and what it means (more or less, I grant) to be an American is growing blurry.

I do not mean to say that we must undo pluralism, or that pluralism, whatever shape it happens to take, is bad. No, not at all. I believe, however, that pluralism should not trump a common and cohesive vision.

PROMOTING A COMMON VISION

An institution that furthers what the schools are still trying to do to promote such a vision, then, presents something of importance and great value. That institution, as I have already said, would be national service—including a military option. The advantages are obvious. If young men and women are obliged—not invited—to share in a common effort for the good of their country, they acquire a

sense of unity outside their own ethnicity or identity group.

They have to, because they are put randomly in with people who may be unlike them in all ways—at least as far as they can tell. But if you talk with people who have served in the military, they will tell you that these differences get buried quickly if the unit is going to survive.

And they can get buried quickly because, for the most part, they are superficial differences of manner, not of matter—differences more of style than substance. Thus, I think that compulsory national service would be as I said, a good balance for a healthy respect for pluralism.

The second benefit I see is a better understanding of the military and military activity. The reporting on the Iraqi war was instructive, if sometimes a bit dismal. The war began with an astounding ground assault—probably the swiftest in the recorded history of warfare.

Yet after a few days, when progress seemed to slow or stop, many reporters and observers began talking about a "quagmire," reminiscent of Vietnam. They were wrong because they did not understand a basic, if overstated, military aphorism: "Amateurs study tactics; professionals study logistics." . . .

. . . [I]t needed and still needs, to be driven home with most Americans who do not understand how armies function—and have since the time of Alexander. Moreover, practically no Members of Congress or their staff members have served in the military and thus were in no better position than the average citizen or reporter to evaluate truly what was going on.

What this means (and this is melancholy) is that most of us are not particularly sympathetic to military needs because we are ignorant of what the military does and how it goes about doing it . . .

So, it seems to me, military service offers two civic values: the information all citizens should have to understand the military, if only to keep its instincts classically civilian; and the ability to continue the work of public schools in presenting common, cohesive visions.

This is related to my third point, that there is value in having citizen-soldiers. It is probably unfair to compare our contemporary military with Hessian mercenaries working for a professional Prussian officer class—but it is a useful image nevertheless. Most of the young people I observed in the Navy were there because they could not afford college, were offered training in a marketable skill, and would have a chance to get a large subsidy if they ultimately went to college.

Moreover, by and large, they came from dying small towns, big city ghettos, and barrios. No matter their race or ethnicity, they were not children of the comfortable American middle class. It is good that the Navy offered them options they never would have had in life.

But what does this create? A military staffed by an underclass and doing it for perfectly understandable financial reasons. While it may have a good admixture of races and sexes, it does not have a fair mix of classes and that is a problem.

When politicians and academics and journalists, who tend to come from the more privileged parts of society, have no stake in the military, it becomes lopsided and ill understood.

SHARED BURDENS

. . . "Shared burden" is not the most popular phrase in the English language (or, rather, the American lexicon) these days, but it goes right to the heart of the matter. Do we want to share burdens, or do we want to fob them off on those who have fewer choices? Do we want to lose the possibility of national cohesion, of shared vision along with shared burden as the price for fobbing off military service? I hope not. . . .

I think it would be an enormous benefit to America and to our young people to let them mix their various qualities and see what rubs off on whom. I think we might be surprised and pleased.

A NATIONAL SERVICE DRAFT

. . . The left used to oppose the draft because it saw it as an instrument of war; it still does, missing the point. The right would now probably oppose it as typical left-wing, big-government interference or social engineering, also missing the point. That does not leave, I am aware, a large political base.

However, that does not daunt me altogether. If the military draft will not by itself work, then why not a national service draft—a draft requiring two years of service, with the military as an option? Let me propose that any other option for service would have to require the intense discipline, group work, and training in particular skills that military duty would require.

And let me propose further that they would have the same rewards: training in some useful skill or occupation, exposure to others of different backgrounds as colleagues, and money for higher education afterward. How we make this work is a topic for another day. But I am convinced that what I am proposing is plausible, not a pipe dream. I think it has a lot to offer.

Speaking as a university president, I think many young people would show up for higher education not merely better financed but infinitely better motivated and clearer on their reasons for pursuing college study.

Speaking as a parent, I would like my sons, like everyone else's children, to make a material contribution to our society and to share that burden with people they might never otherwise know. Speaking as a citizen, I think it would foster that national cohesion that the older ones of us remember. And speaking as a senior citizen, I think there might be fascinating opportunities for national service in retirement. Service need not be a monopoly of the young. . . .

Discussion Questions

1. Trachtenberg supports mandatory national service on the grounds that it will help unify the populace. However, is unification desirable? Support your answer.
2. Public support for the military draft, at 18 percent, is at its lowest point in years.[13] Discuss whether forcing young people who are opposed to conscription constitutes "involuntary servitude" and, as such, violates the Thirteenth Amendment to the Constitution. Discuss also how Trachtenberg might answer this question.
3. The National Service Act of 2007 has been amended to include women. Discuss whether or not women should be conscripted to serve in the military and in combat duty in particular. If so, should exceptions be made for women who are pregnant, as well as for women (and men) who are the primary caretakers of young children? Develop an argument supporting your position.
4. President Ronald Reagan opposed the draft on the grounds that it "rests on the assumption that your kids belong to the state. If we buy that assumption then it is for the state—not the parents, the community, the religious institutions or teachers—to decide who shall have what values and who shall do what work, when, where and how in our society. That assumption isn't a new one. The Nazis thought it was a great idea."[14] Evaluate Reagan's argument and discuss how Trachtenberg might reply.
5. Senator Ron Paul opposes the draft on the grounds that most wars cause senseless suffering and that conscription of young people is discriminatory and constitutes forced servitude. Do you agree? Discuss how Trachtenberg might respond to Paul's concerns.

CASE STUDIES

1. ALLIED FIREBOMBING DURING WORLD WAR II

In 1942 Winston Churchill responded to the question "How are you going to win the war?" by saying, "We will shatter Germany by bombing . . . the severe, ruthless bombing of Germany on an ever-increasing scale will not only cripple her war effort . . . but will create conditions intolerable to the mass of the German population." This statement was followed by a campaign of firebombing German cities. Firebombing consists of dropping large amounts of high explosives on buildings, followed by incendiary devices to ignite them, then more explosives. This creates a self-sustaining firestorm with temperatures peaking at over 1,500 degrees centigrade.

Allied bombers were ordered to attack Berlin, Leipzig, and other German cities in the east to "cause confusion in the evacuation of refugees from the east" and "hamper the movements of troops from the west."[15] The firebombing of German cities continued until 1945, culminating in an attack on the city of Dresden, a cultural center with little war-related industry. The city at the time was crowded with refugees fleeing the Red Army.

The firebombing of Dresden, which has been called "the worst single event massacre of all time,"[16] killed 100,000 people, more than those killed by the atomic bomb dropped several months later on Hiroshima, and destroyed 85 percent of the city. Kurt Vonnegut Jr., who was a prisoner of war in Dresden when it was firebombed, later wrote of the horrors of the event in his book *Slaughterhouse Five*.

Discussion Questions

1. The bombings of German cities were justified by the British on utilitarian grounds. Discuss whether utilitarians would agree with Churchill's line of reasoning.
2. Were the firebombings justified under the just-war theory? Support your answer.
3. In an August 9, 1945, radio speech, aired shortly after a second atomic bomb destroyed Nagasaki, President Truman stated: "If Japan does not surrender, bombs will have to be dropped on her war industries and, unfortunately, thousands of civilian lives will be lost. I urge Japanese civilians to leave industrial cities immediately, and save themselves from destruction."[17] Does warning civilians to leave cities relieve the military of moral responsibility for their deaths? Should the citizens of Dresden have been warned ahead of time? Discuss your answers in light of the just war theory.
4. What is a war crime? Should British Air Marshall Arthur Harris, inventor of area firebombing and the officer who ordered the bombing of Dresden, be tried for war crimes? Is the fact that killing civilians was not the intended purpose of the firebombing (principle of double effect) morally relevant? Support your answers.

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2. USA PATRIOT ACT AND THE WAR AGAINST TERRORISM

The USA Patriot Act, an acronym for Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism, was passed in October 2001 following the September 11 terrorist attacks and reauthorized in 2006.

In 2011 it was extended by President Obama for another four years. The act permits federal agents to search homes and offices, bank accounts, and medical and library records, wiretap phones, and read people's e-mails without their permission. Shortly after the act was passed, more than one thousand Arab and Muslim men were arrested as terrorist suspects. Many were held without being told the charges against them.

In 2003 the American Civil Liberties Union filed nine legal challenges against the Patriot Act, arguing that the act violates the Fourth Amendment of the Constitution, which permits searches only with a warrant. Supporters of the act point out that it does not make sense to warn possible terrorists that they will be subject to search and seizure. However, it is the potential for abuse that worries civil libertarians. Several colleges have protested the act, arguing that it infringes on academic freedom and privacy rights (see Chapter 9, Case Study 4). More than 150 local governments, including at least three state governments, have passed resolutions condemning the Patriot Act as an infringement on civil rights.

Discussion Questions

1. Discuss whether or not apprehending and deterring terrorists outweighs the temporary loss of rights of innocent people who are suspected of terrorism.
2. Does the Patriot Act pose a threat to our civil liberties, or does it work to protect our civil liberties? When is it appropriate for a country to override the rule of law, as explicated by Jonathan Granoff in his readings, in the name of national security? Support your answers.
3. Ben Franklin once said that those who would trade liberty for security deserve neither.[18] Is his position realistic in today's world? Support your answer. Discuss how Thomas Hobbes would most likely respond to Franklin's statement.
4. In response to a question about what would happen if the United States was hit with a weapon of mass destruction that inflicted many casualties, retired General Tommy Franks replied that the Constitution and our liberty and freedoms would likely be discarded for a military form of government.[19] Discuss.

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3. EHREN WATADA: THE OFFICER WHO REFUSED TO BE DEPLOYED

When Ehren Watada, a first lieutenant in the United States Army, received his order in March 2006 to be deployed to Iraq, he refused to go, the first commission officer to do so. Watada maintained that the war in Iraq was illegal because it was based on incorrect information, such as the existence of weapons of mass destruction and the link between Saddam Hussein and al-Qaeda, and because the occupation of Iraq violated the Army's own rules of conduct as well as the UN Charter and Geneva Conventions that prohibit wars of aggression. In response, the Army brought charges of "conduct unbecoming an officer and a gentleman" and of "missing movement" for his refusal to be deployed.

Watada faced the possibility of a court-marital and several years in prison. However, he was willing to face the consequences of his decisions. He stated at a press conference:

> It is my duty as a commissioned officer in the United States army to speak out against grave injustices. My moral and legal obligation is to the Constitution, not to those who issue unlawful orders. I stand before you today because it is my job to serve and protect American soldiers and innocent Iraqis who have no voice. It is my conclusion that the war in Iraq is not only morally wrong, but also a breach of American law.[20]

Several groups, including the ACLU and Amnesty International, have come out in support of Watada. Others, including some members of the Japanese American community and Military Families Voice of Victory, who claim he is helping al-Qaeda, oppose his protest. Watada's court-martial trial ended in a mistrial.

Discussion Questions

1. Using the criteria for civil disobedience listed on page 555, discuss whether Watada's action is an example of civil disobedience.
2. John Rawls writes, "if justified civil disobedience seems to threaten civil concord, the responsibility falls not upon those who protest but upon those whose abuse of authority and power justifies such opposition. For to employ the coercive apparatus of the state in order to maintain manifestly unjust institutions is itself a form of illegitimate force that men in due course have a right to resist."[21] Discuss Rawls's position, relating it to the Watada case.
3. The Army prosecutor in Watada's court-martial trial argued that Watada had "abandoned his soldiers and disgraced himself and the service."[22] Given that Watada voluntarily joined the Army *after* the war in Iraq had begun, does he have a duty of fidelity to carry through on the commitment to the Army and his unit he made when he joined? Discuss whether Watada's refusal to be deployed would have been different from a moral point of view if he had been conscripted into the Army.
4. During the Vietnam War, many of the young men who were drafted refused to participate in the war. While some chose to go to prison, many more left the country. Indeed, some 50,000 draft-age men moved to Canada during the Vietnam era. Discuss what you would do, and why, if the National Service Act is passed and you are drafted to fight in a war that you believe to be unjust.

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4. WHEN PARENTAL DUTY CONFLICTS WITH MILITARY DUTY

The United States is one of the few countries in the world that sends soldiers who are mothers of young children into harm's way in war. In the early 1970s, with the push for the Equal Rights Amendment and "equal career opportunities" in the military, Congress began to integrate the genders in the military. By 1980 the United States had almost 200,000 women on active military duty, the largest number in the world.[23] More than half of these women are mothers, many of them of young children.

In November 2003, Simone and Vaughn Holcomb took an emergency leave from military duty in Iraq and returned to Fort Carson, Colorado, to face a custody battle over two of their seven children, ranging in age from four to twelve years old. The children had been staying with Mr. Holcomb's mother who was no longer able to care for

them. The court mandated that one of the parents must remain in Colorado to retain custody of the children. Otherwise, the judge would rule abandonment and turn over custody of the two children to Vaughn's former wife who was suing for custody of the children.

The Holcombs decided that Vaughn would return to Iraq and Simone would stay behind. "My children always come first," she told a reporter. However, the Army denied her request to be released from active duty, so she remained in Colorado without the army's permission. Simone Holcomb said in justification of her actions, "The Army accepted our applications to be soldiers, they should appreciate our custody problems. I will fight with all my motherly might to protect my children. If both my husband and I are in Iraq together, these children could lose their parents."[24] Holcomb faced dismissal plus possible jail time for her disobedience. In the end, the Army gave Mrs. Holcomb a "compassionate reassignment" to the Colorado National Guard so she could be with her children.

Discussion Questions

1. Discuss whether the judge made the morally right ruling in this case. If you had been the judge, how would you have ruled? Explain your reasoning.
2. In her book *Maternal Thinking, Toward a Politics of Peace,* Sara Ruddick maintains that military thinking and maternal thinking—defined as "preservation love" or keeping the child alive and healthy in an indifferent or hostile world—are set against each other. Ruddick maintains that maternal practice is a natural resource for peace politics because mothers want to prevent harm to their children. Do you agree? If so, how should this insight be incorporated into policies regarding women and mothers in the military? Support your answers.
3. Studies show that newborns and toddlers who lose or are abandoned by their mothers (as happens when a mother is deployed overseas) are much more likely to suffer emotional and mental disorders later in life and to engage in crime and drug use.[25] Given this, discuss how a utilitarian would feel about conscripting mothers of young children or sending mothers into active combat duty.
4. The United Nations Universal Declaration of Human Rights states: "Motherhood and childhood are entitled to special care and protection." Discuss whether sending mothers of young children into combat duty, particularly when they would prefer not to go, is a violation of mothers' rights and the rights of their children.
5. Elaine Donnelly of The Center for Military Readiness is opposed to the current U.S. policy of allowing women to serve near the front lines, arguing that it "violates the long-standing moral imperative that men must protect women from physical harm.[26] Others oppose giving women combat duty on the grounds that women are not physically strong enough for the demands of combat. Also, female combatants who are captured by the enemy are subject to a high risk of rape. Discuss how a liberal feminist would respond to these arguments.
6. If conscription is reinstated, should mothers of dependent children be exempt? Should fathers of young children also be exempt? Support your answers. Discuss how Trachtenberg might answer these questions.

5. PRISONERS OF WAR: TRIALS AND TORTURE

The graphic photographs from Abu Graib prison in Iraq, as well as reports from Guantanamo Bay of prisoners being tortured, raise the question of whether it is ever morally justified to torture military prisoners. The Military Commissions Act of 2006, rather than forbidding the use of torture, forbids only "grave breaches" of the Geneva Conventions. In other words, the new law allowed the use of torture—such as stress positions, half-drowning, and grotesque degradation—against "enemy combatants." It also allowed evidence extracted by torture to be used in trials. In addition, the act authorized a new system of military courts in which prisoners of war could be tried without being represented by a lawyer or being informed of the evidence against them, and without even being present at the trial.

Former President Bush defended the law, saying that Congress should not put restrictions on the president, as commander in chief, to do things—such as torturing enemy combatants to get vital information—that are necessary to protect national security and to effectively fight the "war on terror." Opponents of the law, argued that legitimizing the use of torture damages U.S. policy interests because it can be used by our enemies to justify the torture of American prisoners of war. It also runs counter to our values as a free and democratic nation that is built on respect for the individual. In January 2009 President Obama banned the use of "harsh interrogations techniques," stating that torture is not consistent with "our values and ideals."

Discussion Questions

1. Discuss the arguments for and against the use of torture on prisoners of war. What if it is strongly suspected that a particular prisoner is a terrorist who has information about plans that may lead to the death of thousands of Americans? Discuss how both a utilitarian and a deontologist might answer this question.
2. Apply the just-war theory to the treatment of prisoners of war or enemy combatants. Does the second condition of *jus in bello*—"The tactics used must be a proportional response to the injury being redressed"—permit the use of torture in limited situations, such as the one described in question 1? Support your answer. Discuss how both Anscombe and Coady might answer this question.
3. Discuss the potential impact of the Military Commissions Act on college students and faculty who protest the Iraq war or engage in library or Internet research on terrorism. Referring back to Case Study 4 on page 608–609, discuss whether the University of Massachusetts student in question could be classified as an "unlawful enemy combatant" under the new definition of the term.

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6. THE ASSASSINATION OF OSAMA BIN LADEN

Assassination involves the deliberate killing or murder of a public figure for political reasons. Assassination can be carried out by a private individual, such as the assassination of President Lincoln by John Wilkes Booth, or by a government, such as the killing of terrorist leader Osama bin Laden. In May 2011 a United States special forces (SEALs) unit raided the compound of Osama bin Laden in Pakistan, killing bin Laden

and four others. The Pakistani government was not told of the operation beforehand. In October of the same year, senior al-Qaeda leader Anwar al-Awlaki was assassinated in a drone attack in Yemen.

The announcement by President Obama of the killing of bin Laden was met with celebration by most Americans. The United Nations and the European Union also welcomed news of the death of bin Laden. However, others, including Amnesty International, questioned the legal and ethical ramifications of killing an unarmed man rather than taking bin Laden alive so he could be put on trial. U.S. regulations states that: "no Employee of the United States government shall engage in, or conspire to engage in, political assassination." Government officials stated that the mission was a kill-or-capture mission rather than an assassination mission. The assassination of American-born Anwar al-Awlaki in October 2011 raised further questions since al-Awlaki was an American citizen. While most Americans supported the assassination, the majority of people in other countries, especially predominantly Muslim countries, disapprove of the drone attacks targeting terrorist leaders.

DISCUSSION QUESTION

1. Using the utilitarian calculus (see page 24), evaluate whether assassination of alleged terrorists is a morally acceptable policy. Does the fact that we secretly carried out the assassination of bin Laden and al-Awlaki in countries with which we are not at war affect your calculus and, if so, why?
2. Obama opposes the torture or "enhanced interrogation" of prisoners at Guatantamo Bay. However, information leading to the location of bin Laden was acquired from enhanced interrogation of prisoners, including Khalid Sheikh Mohammed, alleged operational chief of al-Qaeda, under the Bush administration. Discuss whether the outcome (the apprehension of bin Laden and other terrorist leaders) justifies the means (the use of torture). Discuss also how a utilitarian and a deontologist might each.
3. The Obama administration supports the use of targeted drone attacks because they produce fewer American casualties than conventional war. Opponents counter that the use of drones for assassination, especially in countries where we are not at war, condones the use of drones by other governments to target people, possibly in the United States, that they consider a treat to threat to their security. Discuss how both a utilitarian and Brian Michael Jenkins might respond to the two positions.
4. Following the assassination of al-Awlaki, blogontherun.com wrote: "When the president of the United States can singlehandedly order the assassination of a U.S. citizen without charge or trial, we're not just on the slippery slope toward dictatorship, we're in free fall." Discuss.
5. Under what conditions, if any, would it be morally acceptable to assassinate an American citizen in the United States if the government deemed he or she posed a threat to the general public? For example, would it have been morally acceptable for the government to have assassinated, rather than arrested and tried in a court of law, domestic terrorist Timothy McVeigh who blew up the Federal Building in Oklahoma City in 1995? Support your answers.