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Can Force Be Used Justly? Questions of Retributive and Restorative Justice

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Introduction

Is it ever moral to kill another human being? At a less extreme level, is it moral to use force to punish or to coerce another? Christian pacifists answer the question of killing with a strong no, citing the command of Jesus to turn the other cheek when struck on the one and his order to Peter to put away his sword and not defend him when the soldiers came to arrest him. Many Christian pacifists also have reservations about the use of force for punishment or coercion. But there is also a strong Christian tradition of allowing the use of force, up to and including deadly force, at the agency of the political community and subject to stringent moral constraints. This tradition too is biblically grounded, and it has developed within the mainstream of Christian theological reflection from the early church through the Middle Ages to the Reformation and down to the present. This tradition links the moral right to use force to the public good and to God's plan for the government of the world between the fall and the final culmination of his plan at the end of history. Unlike pacifism, it does not identify violence itself as evil but rather distinguishes between the use of force for evil and for good, between that for private ends and that undertaken for the service of justice, good order, and peace. This tradition is that of the idea of just war, though it is about the moral right to use force as such, not only about war as we understand that term. It is, as Paul Ramsey first argued some forty years ago, fundamentally about permission to use force, up to and including deadly force, along with limitation in the employment of that force. Properly understood, it bears on the state's right to use force for justice, order, and peace against those who do evil both internally to the society and against external enemies. It includes the questions of punishment and coercion as well as the awesome question of taking human life. In my discussion here today I want to examine this perspective on these questions regarding the moral use of force. I will do this in two stages. First, I will undertake to explain what this moral perspective entails by an examination of the origin and coalescence of the just war idea. Second, I will bring this discussion of the moral use of force into the present by connecting it to three pressing contemporary issues: internationally, the question of intervention and the fight against terrorism, and domestically, the use of the death penalty.

I. The Coming Together of a Tradition on the Moral use of Force

I want to begin examining the origin and coalescence of the just war idea by reading several quotations from Augustine, one from the early medieval theologian Isidore of Seville, and one from Paul's Epistle to the Romans. First, from Augustine:

If the Christian religion forbade war altogether, those who sought salutary advice in the Gospel would rather have been counseled to cast aside their arms, and to give up soldiering altogether. On the contrary, they were told: "Do violence to no man; . . . and be content with your pay." If he commanded them

to be content with their pay, he did not forbid soldiering. (*Letter to Marcellus*, cxxviii)

Again from Augustine:

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. (*Contra Faustum* xxii.75)

And:

A just war is . . . 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. (*Questiones in Heptateuchum*, q. x, *super Josue*)

From Isidore of Seville:

A war is just when . . . it is waged in order to regain what has been stolen or to repel the attack of enemies. (Gratian, *Decretum*, Second Part, XXIII.II.I)

Returning to Augustine:

What is evil in war? It is not the deaths of some who will soon die anyway. The desire for harming, the cruelty of avenging, an unruly and implacable animosity, the rage of rebellion, the lust of domination and the like—these are the things which are to be blamed in war. (*Contra Faustum* xxii.74)

And this:

We do not seek peace in order to be at war, but we go to war that we may have peace. Be peaceful, therefore, in warring, so that you may vanquish those whom you war against, and bring them to the prosperity of peace. (*Letter to Boniface* clxxxix)

Finally, from the book of Romans:

For rulers are not a terror to good conduct, but to bad. Would you have no fear of him who is in authority? Then do what is good, and you will receive his approval, for he is God's servant for your good. But if you do wrong, be afraid, for he does not bear the sword in vain; he is the servant of God to execute his wrath on the wrongdoer. (Romans 13:3-4)

These few passages constitute the core of the idea of just war as it first came together in Christian moral thought in the Middle Ages and as it should be defined in reflection on the moral use of force today. The first passage refutes the argument that Christians ought to reject all forms of the use of force, but affirms that they may without sin serve in the armed forces of the state—which in the context of the time also meant in the role of police. The second passage defines and restricts the right to resort

to force to the “supreme authority” in the political community, implicitly denying it to everyone else who would employ force on his own behalf, that is, anyone who would, in the language of the first passage, “do violence” to another. The third and fourth passages clarify the limited range of causes that justify resort to force: for Augustine, punishing wrongdoing and restoring what has been unjustly taken away; from Isidore, retaking that which has been stolen and defending against unjust attack. Other causes that some might wish to include as justifications for resort to force are absent here; these are passages that strictly limit while specifying what the sovereign authority must look for. In the fifth passage I have quoted Augustine defines what becomes the just war requirement of right intention. It is for him a matter of inner attitude or, we might say, mindset toward the use of force itself and toward those against whom it is to be used. One does not use force justly if he is seduced by the power it gives him or if he uses it out of blinding hatred towards the enemy. For Augustine and his medieval successors, this was perhaps the most central requirement of all, for it drew the distinction between acting out of sinful *cupiditas* or self-love—the kind of intentionality from which all the sorts of evil intentions denounced in the passage arise—and the kind of love which the presence of grace inspires, *caritas* or charity, love that is directed towards the good of the neighbor, the triumph of the heavenly city, and life in the presence of God. The last passage from Augustine defines the ultimate purpose to which all moral uses of force should aim: the restoration of peace where there has been war, along with a caution that in order to gain peace, one must fight “peacefully,” that is, in a way that does not undermine the achievement of peace but supports it.

Romans 13:3-4 stands as a kind of motto for medieval and early modern Christian thinking about the just use of force: it belongs properly to the role of political authority as an element in God’s government of the world. In the immediate context of the passages I have quoted, it gives the religious reason why force should morally be restricted to the highest authority in the political community. Among medieval and early modern just war theorists, this is the main use to which this passage from Romans was put. But the passage also had another kind of influence: if the ruler is the servant of God who is to act in the stead of God to punish evil, some reasoned, then this tells us what the ruler himself must be and what ought to be the quality of his rule and of the society he governs. Thus Romans 13:3-4 also became a foundational passage for a tradition of reflection on the good ruler and the good state, a tradition that found its culmination in Erasmus’ *The Education of a Christian Prince* and, beyond Erasmus, helped to influence modern political theory on what good government should be and what it should aim at.

Taken all together, then, these sparse passages I have quoted have had a great influence on western thought on the just use of force within the context of life in political community. They first appeared in close, thematic connection together with other passages from the Bible, from Augustine, and from other magisterial Christian theologians in the canonist Gratian’s *Decretum* from the middle of the twelfth century. Their purpose there, and the purpose of canon law generally, was to guide Christian moral behavior by specifying right and wrong uses of force by Christians in the context of God’s overall government of the world. The later canonists focused mostly on the question of the use of force by the governing authority and on limiting the number of kinds of people who could claim a right to have recourse to arms. A century and a quarter after Gratian the passages from Augustine and from Romans were used as the backbone of Thomas Aquinas’ discussion of just war in the *Summa Theologica*, where they were tied especially to the concept of responsibility in good government as

exercised by the just ruler. These two concerns, on the one hand for the moral behavior of individual Christians and on the other hand for the exercise of just rule, remained central to the development of normative Christian thinking about the use of force right through the Middle Ages and into the era of the Reformation and beyond. Luther, Zwingli, and Calvin, like the canonists and the scholastic theologians before them, mainly addressed the question of the just use of force in the context of thinking about the rights and responsibilities of government—Luther more exclusively on governmental authority, the Reformed theologians with more balance between such authority and the moral responsibilities of Christians living under such authority. In later Reformed thinkers, like the Puritan theologian William Ames, the balance shifted more toward the rights and responsibilities of individual Christians in relation to the use of force and to government in general, and this has been the line of development generally followed by the main line of western thought, secular as well as religious, throughout the modern era. We see this in different ways, for example, in Hugo Grotius and in international law, where governing authority is understood in a *de facto* way, as morally neutral in character, and the focus is on the limits of the use of force by those who act in the service of the state; and in the development of democratic theory from Locke forward, where the rights of government are tied explicitly to those of citizens, and the use of force accordingly has to be described first of all in terms of the protection of those rights. This is the frame from which we instinctively approach matters of the use of force today, the frame defined by the tradition associated with Grotius on the one hand and that associated with Locke on the other. But in order to remain true to the idea of just war and its implications for government and for individual moral conduct as originally defined in Christian thought, we need to look beyond the modern frame to what the passages I cited above were taken to mean when they were first placed together, and how their meaning was amplified by other ideas.

What of these other ideas? I will say more about them in a moment. First, though, I want to underscore the meaning and importance of the four ideas already identified by means of the passages quoted at the beginning: sovereign authority, just cause, right intention, and the aim of peace. These are fundamental deontological requirements, requirements that limit the use of force to sovereign authority and then impose binding duties on that authority: to insure that the cause is one of the just causes identified, the mindset is not one of evil intention, and the purpose is the reestablishment of peace. It is important, in the original definition of these requirements, that sovereign authority comes first, for that authority is the only one who properly can determine whether the other three requirements are satisfied. This understanding of the moral priorities disappears at the beginning of the modern period, when sovereignty becomes simply a *de facto* characteristic of commonly recognized states. Yet a moral component to sovereign authority—the idea that there are genuinely good and bad exercises of such authority—is an essential part of the whole Christian theory of justified resort to force, and we need to find a way to talk meaningfully about this again.

Now to the additional ideas that amplified these four core essentials in the medieval and early modern effort to define a systematic Christian way of thinking about just resort to force. First, anyone who knows recent just war thinking must have noted that three moral criteria often emphasized today are not included in these four core deontological requirements. These three are that the use of force contemplated be expected to do more good than harm (the criterion of proportionality), that it have a

reasonable hope of success, and that it be a last resort. It is only in recent listings of the just war criteria that these are named separately and often put on a level with, or even ahead of, the requirements of sovereign authority, just cause, right intention, and the purpose of establishing peace. There is a reason they do not appear with such prominence in earlier thought: they are prudential criteria, and when they appear in earlier just war thought they are concerns that those in sovereign authority must satisfy in judging whether, finally, to resort to force even when the cause is just, the intention is right, and the purpose is to establish peace. When sovereign authority becomes a *de facto* possession of every state and is no longer a quality possessed by right of governing according to the natural moral order of the cosmos or the will of God, then these prudential requirements change their character and become part of the general moral critique of the use of force. Yet, I would stress, they have a secondary, supportive role relative to the four core concerns, and it is a serious distortion of just war thinking to give them the equal or dominant role they often are given today, usually by persons interested in denying that there is ever any justified resort to force.

All the ideas I have been discussing pertain to what came to be called the *jus ad bellum*, the rules for resort to war. The justice of resorting to force was, in fact, the main concern of the twelfth- and thirteenth-century Christian writers who first began to make the idea of just war into a coherent, consistent, consensually binding whole. As I have already mentioned, the church moralists historically first approached the idea of right conduct in the use of force through the prism of the requirement of right intention or mindset toward force and the enemy. A series of church councils, beginning as early as the ninth century, imposed the requirement of confession and penance on warriors returning from battle in case they had fought with a wrong intention—hatred of the enemy, say, or bloodlust, or pride in their own dominance over an adversary. As a sanction, they were not to be admitted to mass until the penance was completed. But beginning in the tenth century two other approaches to defining just conduct in war emerged, approaches which continue today to define the idea of *jus in bello*, the rules for conduct in war. One approach was the introduction of the idea of noncombatant immunity by means of lists of classes of persons—women, children, the aged or infirm, peaceful townspeople, peasants on their land, persons engaged in religious pursuits, and others—who, as the typical rationale put it, took no part in war, and therefore should not have war waged against them. Today we have been taught by Paul Ramsey and others to think of this as the moral principle of discrimination, but the traditional approach, defining classes of people as noncombatants to be protected from the ravages of war, is still followed in the Geneva Conventions. The second historical approach to defining justified conduct in war was the introduction of the idea that certain means of war, and in particular certain weapons, are so dangerous—indiscriminate in their effects or disproportionately destructive—that they should be banned and those who use them anathematized. This is more than Ramsey's *in bello* principle of proportionality, much used in recent moral debate on war. The traditional approach, once again, is found in the law of armed conflicts, which includes specific limits on certain forms of targeting and outlaws certain particular weapons.

When we assemble all these ideas I have identified, we are face-to-face with the idea of just war as it has been historically defined in Christian tradition. There are also secular versions of this tradition, and at times the main line of development has been carried more by secular thinkers and institutions than by Christian moral reflection. Today we have versions of just war thinking in international law, as I have already suggested, in military codes of conduct, in the thought of political philosophers like

Michael Walzer, and even in the language of policy. But there are reasons to maintain a specifically Christian perspective on this issue, not only for informing the behavior of individual Christians who may be involved in the use of force as ordinary police or soldiers or in command roles, up to the highest level of government, but also as a way of contributing to a vigorous public debate aimed at understanding the justifications and limits of the use of force in the nation and the world today.

II. Thinking in a Just War Way about Three Contemporary Issues

I want now to turn to three contemporary issues involving the use of force by governmental authority: internationally, the question of military intervention for the sake of protecting human rights and the fight against terrorism in the aftermath of the September 11 attacks; domestically, the question of the use of the death penalty.

I have chosen these first two issues not only because of their immediacy—American military forces today are deployed for both purposes abroad—but because they allow us to confront a very interesting tendency in some American Christian thinking about the use of force in international contexts: that the use of military force to protect American national interests is bad, or at least gravely morally suspect, while use of such force for the protection of the human rights of others, especially if this has no national interest component, is good. Thus we find the following language in a 1998 Resolution of the Presbyterian Church (USA): “[Intervention] must constitute humanitarian rescue and not cloak the pursuit of the economic or narrow security interests of the intervening powers.” (PCUSA, “Just Peacemaking and the Call for International Intervention for Humanitarian Rescue,” criterion 3). While no rationale is provided for this, I suggest something like the following logic for it: that serving one’s own economic or security interests is inherently selfish, and thus perhaps, in Augustinian terms, a reflection of sinful *cupiditas*, human self-love infected by pride, while humanitarian rescue in the absence of any economic or security interests is unselfish, and thus an expression appropriate to the self-giving of Christian love for neighbor. But the sentiment expressed here has also taken other forms. It has provided the thrust of much Christian criticism of the American and western involvement in the Gulf War: the “blood for oil” argument. At other times the argument is made in terms of the need for consistency: if the United States is genuinely concerned for international order, or for human rights, or for some other good of similar magnitude, and wishes to use force to protect that good, then it ought to be willing to use force in all cases where such issues are at stake, not just some. If we did not intervene in Rwanda or in Tibet, the consistency argument goes, how can we be trusted to have good motives in the Gulf War or in Bosnia—or perhaps in the fight against terrorism?

The last major version of this argument I will mention is the one advanced by the American Catholic bishops. In their 1983 pastoral, *The Challenge of Peace* (National Conference of Catholic Bishops 1983), they defined Catholic just war tradition as beginning with a “presumption against war” and went on to define a position, admittedly focused on the problem of nuclear weapons, that was severely critical of planning, policies, and actions aimed at the use of armed force for purposes other than deterrence. “War-fighting” to protect national interests thus was rejected. Ten years later, however, in their 1993 statement, *The Harvest of Justice Is Sown in Peace*, while continuing to hold to the “presumption against war” and arguing strongly for building

down national military capacity, they warmly embraced the cause of humanitarian intervention, citing Pope John Paul II that “[t]his is a duty for nations and the international community” (National Conference of Catholic Bishops 1993: 15).

Let me briefly say what I think is wrong with these arguments, not from the perspective of realism, but from the perspective of normative Christian tradition on the political community, government, and justified use of force.

First, from this perspective it is precisely the obligation of the state, and of the highest authority in every state, to see to the good of that political community: to protect its people’s lives, safety and security, and livelihoods, to safeguard the bonds of commonality and mutuality that bind its people together into a community, and to protect those high values which serve justice, stability and peace both domestically and internationally. The national interest may, of course, be defined more broadly, but it must at least include these factors and others like them, or else the moral reason for the state’s very existence is undermined. If one thinks the national interest is being defined too broadly or is being distorted, then that is a proper focus for public debate, but no person in political authority or in military service should fear decisions or actions that serve national interests as such: to serve such interests is what the political community exists for in the first place. Turning the matter around, when those in political authority do not protect their people’s good but rather subvert that good for their own benefit, this is exactly the sort of situation which may justify an external intervention on the people’s behalf.

Second, the Presbyterian statement and other arguments like it forget the essential difference between public and private morality. It is one thing to insist on an individual morality of unselfish self-giving toward others. But in the case of the political community those others include one’s fellow citizens, and their good must be taken into account as well as that of persons in other communities. The individual, as individual, may give him- or herself totally for the sake of the other, but this is not the case for the political community or those who serve it in positions of authority to guide its policies and actions. Their obligations, as public servants, are different, and it is a distortion to hold their decisions for the sake of the whole community to the standards of individual unselfishness.

Third, if we take seriously the prudential requirements that a use of force be expected to do more good than harm, have a reasonable hope of succeeding in its purpose of reestablishing justice and creating peace, and be a last resort among the options available, a raw consistency (e.g., why the Gulf War and not Tibet?) is clearly not part of the moral answer to the question whether to use force in a given case. There are cases in which the use of force might be justified in terms of the four deontological criteria in the just war *jus ad bellum*, but in which the decision to use force would not be morally the right decision because of these prudential considerations. One ought to be morally consistent, but the right kind of consistency is taking account of all the relevant considerations, not gerrymandering them to suit the desired outcome.

Fourth, and particularly against the policy statements of the American Catholic bishops, what we find in Christian just war tradition is not a presumption against war but a presumption against injustice. The use of armed force is not itself the moral issue, but whether the use of force does or does not serve the cause of a just human order and the goal of peace. There are serious moral issues in the use of nuclear weapons, the Catholic bishops’ original focus. I myself think their 1983 statement is deeply flawed in its analysis of these issues. But in any case, to extend a critique aimed at eliminating

nuclear weapons into a more general negative judgment on national uses of armed force for other purposes that serve the national interest is to go too far, for reasons I have already given.

Still with all this said, intervention to halt and redress gross violations of human rights is a special and very interesting problem for moral uses of armed force. The thrust of moral and legal thinking on war for the last four centuries has been to restrict the right to use force to that of sovereign powers to respond to threats to their territorial borders, or by extension, threats to citizens and national interests outside those borders. From this perspective armed intervention by outsiders across territorial borders looks like aggression in moral terms, and it looks like a violation of sovereignty as defined in international law. What I have just said about armed intervention also applies to international war crimes tribunals. Thus, it is no surprise that a central element in Slobodan Milosevic's response to his being brought before the International Criminal Tribunal for the Former Yugoslavia was to claim sovereign rights for himself as a former head of state and to deny any external jurisdiction in the matters for which he had been indicted. More broadly, any government whose territory is the focus of armed intervention has, according to standard provisions of international law, the right to use armed force to protect itself.

This is one side of the issue. The other side is the claim that protection of human rights is a higher value than territorial immunity and the standard definition of sovereign rights. In international law the growth of international human rights law since 1945, coupled with the Genocide Convention and the extension of the law of armed conflicts to apply to all kinds of such conflicts and not only formal wars between states, provides substantive grounds for arguing that the standard protections due sovereignty, including the sanctity of territorial borders, no longer apply in cases of gross violations of human rights, whether these be the result of government action or of inaction. In the moral frame, the argument is as many Christian bodies have framed it: there is a moral responsibility to come to the aid of the victims of such persecution.

Complicating the national debate has been the argument over whether United States military forces should be used for humanitarian interventions like those in Bosnia and Kosovo—whether this is their proper mission, whether such use degrades their ability to protect and defend the United States, whether it is right to put at risk people who enlisted for other purposes. Can anything useful be added to this debate from the standpoint of just war reasoning? I think it can, with implications also for thinking about the moral use of force more broadly. Let me make three observations.

First, we need to recall in this connection the close relationship between the exercise of sovereign political authority as defined in Christian tradition and the right—indeed, at times the obligation—to use force. This is what Romans 13:4 historically was understood to be about. First, the ruler is defined as “God’s servant for your good,” that is the good of the people. This was understood not as an indicative statement, but as a normative one: the ruler who does not act as God’s servant for his people’s good is no longer rightly a ruler. This understanding of the normative obligations of political authority is what lay behind Calvin’s well known allowance that inferior magistrates might depose rulers who misuse their office. Earlier, though, the right to take such action was understood by Christian thinkers to lie with other rulers. Thus Romans 13:4 continues, “if you do wrong, be afraid; for [the ruler] does not bear the sword in vain; he is the servant of God to execute his wrath on the wrongdoer.” This is the source of the idea of punishment of evil which, we recall, is one of three justifying causes for resort to force recognized in just war tradition. For thinkers in this

tradition from the twelfth to the sixteenth centuries this allowed what we would today call interventionary uses of force when a ruler failed seriously to carry out the obligations of his office. Thus there is clearly a moral argument in Christian tradition in support for use of force across borders in such cases—not only for humanitarian reasons, but also, for example, when the governing authorities support or do nothing to stop evildoing that reaches beyond borders to harm others.

My second observation is that this moral argument pertains to those in authority in sovereign political communities. It has to do with what they may, and perhaps ought, to do in their own capacities. Some in the debate over intervention have argued that intervention must always be authorized by the United Nations Security Council; others have argued only that intervention must always be multilateral. I do not believe that just war analysis leads inevitably to either conclusion. These are effectively prudential arguments employed to seek to curb aggression in the name of humanitarian intervention. Prudentially, there is certainly good sense in the effort to achieve international agreement that an intervention is justified. Ultimately, though, in moral and political terms, this is a matter for those in authority in each society to determine. International law leaves room for collective and even individual actions without explicit Security Council approval. This allows collective actions like that of NATO over Kosovo or that of surrounding African states after the Rwandan genocide, as well as individual interventions like that of Nigeria in Sierra Leone during one of the worst stages in the conflict there. Prudential concerns imply collective action and even Security Council approval; the moral justification, though, pertains to the responsibility of individual states and those in authority in them.

My third observation is that the right to punish evil in this way must be used only with caution, for it can all too easily be misused. This is why, I think, war for religion has been so decisively rejected in Western moral and legal thought on the use of force from the Reformation era onwards. It is also, I suggest, why present-day justifications for intervention coalesce only around exceptional cases of violations of human rights, despite what this implies for the suffering an oppressed people must endure before they can receive help. That is, the evil that is to be punished, if the use of force across borders is to be just, must be palpable and incontrovertible; it must be associated with the clear failure of a state to do what political communities exist to do: provide a just and peaceful order for their members.

These same considerations apply to the fight against terrorism, except that here the cause of defense comes into play along with that of punishment. As for defense, there is no moral requirement that it be only passive, like imposing tighter security at airports and at borders; what is morally allowed also includes projections of force. This may be unilateral on the part of the society injured directly, but the permission to defend also includes the forming of formal and *ad hoc* alliances and other forms of multilateral cooperation. That which it is justified to defend against is not only acts that are in progress, in the sense of warding off a blow already descending, but also anything that constitutes a real and certain threat to the society as a whole or in any of its parts. The same act may be both defensive and punitive.

If we think about the measures that might rightly be used against those responsible for the September 11 attacks on America, others who may have assisted in those attacks or be involved in planning or preparation for others, and those who support their actions and provide safe haven, there is in my mind no doubt that actions up to and including the use of armed force are justified according to the moral reasoning we find in just war tradition. At the same time the requirement of right

intention means that any response ought to be carefully gauged in terms of the wrong done or offered and not be characterized by any of those evils Augustine named: the desire to dominate, a cruel thirst for vengeance, “an unruly and implacable animosity” towards whole groups of people, or the desire simply to strike back, to give harm indiscriminately because indiscriminate harm has been received. The governing final goal should be, after all, to create peace where now there is animosity and conflict. While means of response up to and including military ones are justified by this moral reasoning, there is no implication that military action should be the only proper response or that it be the preferred form of response. Rather, what is justified by the need to defend and punish is the response, whether it take the form of military force or not. If force is employed, it should be discriminating in its targets and proportionate in its destructiveness, including the possibility of collateral harm. In terms of the morality of the use of force, broadly speaking, there is no difference between what just war thinking implies for the use of force against terrorists and what it implies for the use of force against states. What complicates the matter is the calculus of effectiveness required for the choice to use force in the first place and, in the use of force, the very real problem of identifying the proper targets and striking them in such a way as to minimize the harm to those people among whom terrorists often shelter themselves, but who are not themselves terrorists.

Terrorism as it exists today is evil in its own particular ways. There has been some debate over the years, renewed after the September 11 attacks, over whether terrorism is more like criminal activity or war. If the former, the argument goes, then the way to deal with it is by security measures, police work, and judicial procedures; if the latter, then diplomacy, economic sanctions, and ultimately military force are the means of choice. The truth is that terrorism is like both, and both sorts of measures should be used as appropriate. In just war terms, terrorism is criminal activity in that it proceeds from leaders who lack right authority and the responsibility that goes with it, or else, in the case of state-sponsored terrorism, those in authority intentionally keep themselves at a remove from the organizations and agents who carry out the acts of terror. In either case the test of politically responsible authority is not met. Terrorism also lacks just cause, in that its purpose is not to restore justice but to balance a perceived injustice with another injustice. It lacks right intention in that it is motivated by a general hatred and desire to dominate. It lacks concern for the end of peace because its method is intentionally to cause chaos and strife. In *jus in bello* terms, its peculiar evil is that its trademark is direct, intentional attacks on the innocent as its chosen way of seeking to hurt its chosen enemies. Osama bin Laden’s 1998 *fatwa* calling for a *jihad* against “Jews and crusaders” calls on every Muslim to attack every American, wherever he or she may be vulnerable. This is the direct opposite not only of Christian tradition on noncombatancy and the provisions of international law, but also of the clear teaching of normative Islam, where the combatant-noncombatant distinction is as clear as it is in Western moral and legal tradition. If anyone doubts that the September 11 attacks were aimed at innocents, one need only ask, what did the thousands who died there do to deserve that? The answer is nothing. They were merely instruments by which the terrorists sought to attack the nation as a whole. In criminal-law terms, these attacks were murder; in law-of-armed-conflicts terms, they were crimes of war. There should be no escaping this.

What makes terrorism unlike criminal activity as usually conceived is its international and global character, including its necessary dependence on the support and protection of friendly governments. Other contemporary phenomena like the

trade in drugs also meet this test, and similarly fall between criminal activity and war. In such cases the term “war” is not an improper one for the national response. Indeed, just war tradition in its origins never distinguished between the use of force by the political community to combat disturbers of justice, order, and peace at home or abroad. The critical distinction made there was between use of force for the public good (*bellum*) and private use of force (*duellum*). We should not worry overmuch about use of the term “war” in the fight against terrorism. It is, in just war terms, a proper *bellum* for the use of all levels of force as appropriate by the national authority to respond to this profound form of evildoing.

Finally, I turn to a specifically domestic issue, the question of capital punishment. Just war thinking can provide moral guidance on this for the reason I have just mentioned: the critical moral issue is not the domestic-international distinction but the difference between use of force by public authority and for the public good and use of force by private persons for their own purposes. From the moral perspective I have been discussing there is no question that the public authority has the right to execute the death penalty on the worst offenders against the public good. This, I think, should not be in question. Indeed, Augustine thought it so unworthy of debate that he used the example of the public hangman to explain why a Christian should not fear to serve the political community as a soldier. The moral problem arises only after the questions of authority and just cause have been settled.

What of right intention? In a recent issue of *First Things* Avery Cardinal Dulles offers the following judgment:

For better or worse, the state in our secular democratic societies is seen as a creature and instrument of the people, bound to carry out the will of the majority. In a society so governed, it becomes difficult to see the death sentence as representing the divine order of justice. Rather, it is seen as implementing the sovereign will of the people, whose appetite for vengeance grows with what it feeds on. (*First Things* No. 115, September 2001, 15)

On the face of it this observation seems to suggest that use of the death penalty is wrong for structural reasons in democratic societies but might be right in nondemocratic ones, where the death sentence might truly represent “the divine order of justice.” One wonders why this same line of argument would not extend to calling in question a democracy’s right to use force in defense or retaliation for an armed attack. In any case, I have already shown why I do not accept this line of reasoning either for myself or as a true representation of the Christian moral tradition on the use of force. What I want to focus on in Dulles’ statement is something else: his suggestion that the death penalty is inappropriate in American society because it is connected to a popular “appetite for vengeance” that “grows with what it feeds on.” This directly concerns whether use of the death penalty satisfies the moral requirement of right intention. My answer is, yes and no. Augustine’s term when defining wrong intention was “the cruelty of avenging” or “a cruel vengeance”; what he was concerned to avoid was cruelty, not vengeance as such, which in the absence of cruelty has a different moral character. In other words, what Augustine had in mind seems to me similar to our ban against “cruel and unusual” punishments. Dulles’ usage seems to assume that the desire for vengeance is in itself an example of wrong motivation and opposed to justice. I think he has a point, but I would not make it so globally as he does. We have recently witnessed the phenomenon of courts allowing persons injured by a crime to make

emotional appeals during the sentencing process, appeals designed to lead to harsher sentences for those convicted. One can argue that this serves justice by making more visible the nature of the harm done. Yet one does not have to approach this from the position of a fastidious concern for the isolation of the judicial process to see that this raises real questions about the intentionality of the sentencing process. There is a reason for sequestering juries in cases involving crimes that have raised great public outcry; similarly, I think courts should not allow personal appeals by victims of crimes to attempt to influence the sentencing process. Doing so puts in question the presence of right intention in the judicial process.

Further moral questions are raised by asking whether the death penalty produces more good than harm and whether it is genuinely a last resort. In the case of war these questions always apply to the specific case at hand; new cases require new calculations. Applied to the domestic use of the death penalty, this model would at minimum require the abolition of mandatory death sentences, so that each case would be decided independently, with justice meted out on the merits of the case. Can anything be said more generally? I think that in principle it should not, since prudential judgments by their nature must be revisited again and again as conditions change. The results of one such decision at a given time, under particular conditions, should not be made into a moral absolute. But that may be one of the best reasons for a new consideration of the proportionality of the use of the death penalty—to question the use that has crystallized out of past decisions made under their own circumstances.

As for whether the death penalty constitutes a proper last resort, I would argue that it does not as presently constituted. Last resort, like proportionality, needs to be decided on a case-by-case basis. What this implies is, as in the case of proportionality, doing away with mandatory death sentences but retaining, for certain crimes, the possibility of the death penalty at the end of the moral spectrum of possibilities.

One of the current arguments against the use of the death penalty in the United States is that the judicial processes which lead to its imposition are very often systematically flawed with the result that the careful discrimination called for loses out to conviction of the wrong people. This is the same territory as the just war requirement of discrimination or noncombatant immunity, which requires that the innocent not be directly, intentionally targeted, that efforts be made to identify them correctly (for example, not treating all members of an enemy society as if they were proper objects of attack), and that means be chosen that do not unduly punish them. In other words, when applied to thinking about the use of the death penalty just war reasoning raises questions as to whether the punishment properly targets the guilty, whether it tends to target racial minorities and the poor as groups, whether it should not give way to other forms of punishment where there is some ambiguity as to these factors. To pursue this line of thinking further, consider that the just war idea of noncombatant immunity has historically identified the mentally incompetent as properly immune from direct, intended attack. This argues against imposing the death penalty on the mentally retarded, and not only those deemed legally insane.

The overall thrust of the moral argument regarding the use of force is the same, I believe, for both the international and domestic cases: resort to deadly force is permitted under specific conditions, but it is also morally limited. Even in an armed conflict justified in terms of the deontological criteria, there are prudential restraints that are to be taken into account, and in using justified force there are limits that should be observed. At the extreme of possibility, it is possible to imagine a conflict in which the enemy is not killed but simply imprisoned or otherwise made incapable of fighting. In

the domestic context this is the reality, not a utopian image, for prison provides a real option to death for control of criminals who might otherwise be judged to deserve death for their actions against the society.

These are but a few considerations applying just war reasoning to consideration of the moral issues involved in the death penalty. While I have not explored them in depth, I have attempted to identify a line of argument that comes from such reasoning: that while the option of the death penalty may rightly remain for exceptional cases, the moral argument works against mandatory death sentences for whole classes of crimes, and it implies that the use of the death penalty should otherwise be limited because of the existence of other alternative penalties and because of the problem of violating discrimination, that is, killing people who do not deserve, in justice, to be killed.

Conclusion

What I have been arguing is that Christian moral tradition on the political community and the use of force by it for the service of the public good continues to offer relevant moral guidance for contemporary debates over the use of force, whether internationally or domestically. This argument rejects the position that there is never any justification for the use of force, whether by individuals or by governments acting on behalf of their political communities; I believe Christian thought carries a different message. My argument also rejects two other methods in ethical reasoning found in contemporary Christian thought: the pacifist claim that the only place to look for moral guidance is the Bible or the experience of the early church, or some combination of both, and that contemporary issues should be approached principally by an effort to live an individually Christlike life. My argument against the first is that while these are properly ultimate reference points for Christian living, there is a kind of arrogance in not being willing to take account of what previous generations of Christians have done in their own moral reasoning to respond to the guidance they find there. We are historical beings, and we live this out most completely when we take into account the normative traditions shaped by the historical effort to live out the meaning of Christian life. This means taking moral traditions seriously. As for the emphasis on the Christlike life, this is always properly a goal for individual Christians. But it is not nearly so simple to do so as many seem to assume, and certainly not so simple to do so in every respect and not simply in the one respect of rejecting violence. It is important to avoid being selective in representing what being Christlike implies: the New Testament record is not single-minded on this in regard to the question of force, and in any case the use of force is but one part of a larger moral package, not all of which advocates of an ethic of Christlikeness may be prepared to embrace. A further issue is the difference between private and public morality: responsibility for life together in political community introduces many more, and much more complex, moral obligations than we find in the moral life of the single individual. One has to work out what this means, if one is in a position of public responsibility, and just war tradition is effectively the collective moral wisdom produced over a long history of trying to figure this out.

Concern over the morality of the use of force is properly worth addressing at any time and place. In the present context, though, it seems to me utterly necessary to do so. For Christians, this means understanding what Christian tradition yields on the good of then political community and on the use of force in the service of that good. This is what I have, in brief, sought to outline in this talk. Thank you.