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Alex J. Bellamy

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# Is the War on Terror Just?<sup>1</sup>

Alex J. Bellamy, *University of Queensland, Australia*

## Abstract

This article explores the question of whether the war on terror is just. It begins by arguing that the Just War tradition offers a better way of asking moral questions about war than either pacifism or realism. Applying the Just War tradition suggests that in order to justify a war on terrorism, we need to know exactly who the terrorists are and whether they have given us just cause for war. The war on terror as conceived by the Bush administration does not satisfy these tests because it threatens to wage war on those who have done no wrong and constitutes a disproportionate response. Whilst the war on terror may be unjust, war against specific terrorists may certainly be justifiable. The final part of the article explores some of the *jus in bello* elements of the war on terror and raises grave concerns about the way that the US and its allies are conducting the war.

Keywords: *Afghanistan, Just War, laws of war, pacifism, realism, war on terror*

In the immediate aftermath of the terrorist attacks of 11 September 2001, President George W. Bush called for a 'war against terrorism'.<sup>2</sup> Terrorists, the President argued, do not merely kill people, they also threaten the democratic way of life.<sup>3</sup> As a result, 'our war on terror begins with al-Qaeda, but it does not end there. It will not end until every terrorist group of global reach has been found, stopped and defeated'.<sup>4</sup> Since then, the United States has used force to overthrow the regimes in Afghanistan and Iraq and has reoriented its national security strategy to create a right of pre-emptive self-defence for itself. Scholars of international relations have had much to say about whether elements of the war on terror are strategically and politically prudent or legal.<sup>5</sup> They have focused less on the question of whether the war is just.<sup>6</sup> Although questions of prudence and legality are important ones, it is also important to ask whether what is being done in our name is 'right'. As Oliver O'Donovan has recently pointed out, 'these decisions are, on the one hand, *ours*, and not to be thrown off on to others' shoulders with a shudder of irritated editorialising'.<sup>7</sup>

In order to address this gap, this article asks whether the war on terror is just. It is important to recognise that within Western traditions of thought about war there are at least three durable perspectives on the ethics of war: realism, pacifism and the Just War tradition.<sup>8</sup> Realism holds that no universal *moral* constraints should be placed on the conduct of war when the survival of the state is at stake. The only constraints on the way states protect themselves should be prudential.<sup>9</sup> Pacifism is defined by its moral renunciation of the use of force. Deontological pacifists insist that war is inherently wrong because it involves killing and hence breaches 'the



foremost duties of justice'.<sup>10</sup> Consequentialist pacifists argue that war itself need not always be wrong but that the destructiveness of modern war means that it is inconceivable that such war could be just because the costs will always outweigh the benefits. As Robert Holmes put it, 'the conditions that might theoretically justify war are simply not met in the actual world, hence that war is impermissible in the world as we know it'.<sup>11</sup> Both of these traditions limit the scope of moral thinking about war. Realism does so by doubting the efficacy of morally guided action and insisting that morality is created within and confined to the community (understood as synonymous with the state).<sup>12</sup> Pacifism holds that because killing can never be morally justified we must be deeply sceptical of attempts to do so. Both realist and pacifist positions are ultimately unsatisfying, however, because they tell us little about the moral dilemmas that surround the decision to wage war and do not offer means of assessing and constraining the actual conduct of war.

Therefore, after briefly discussing realist and pacifist positions on the justness of the war against terror, the article turns to the Just War tradition. I begin by asking whether all terrorism is unjust and whether or not terrorism provides a just cause for war in all circumstances. This is a problematic issue because there is no agreement about what terrorism actually is. Therefore we need to ask *why* terrorism is unjust and, from this, *who* the terrorists are that may be justly targeted. Following that, the article turns to address the morality of the war on terror itself, asking whether its different manifestations are just. It concludes by arguing that some aspects of the war on terror are just, but that there is a need to interrogate each of them individually.

### Realism and the necessities of war

Many realists hold that the defence of the state and its vital national interests are reason enough to go to war and that when the state's vital interest or very survival is at stake, the only constraints should be prudential considerations. Thus, classical realists tend to be conservative about supporting the use of force. Clausewitz's famous dictum that 'war is nothing but the continuation of policy by other means'<sup>13</sup> does not so much give governments a free hand to wage war as implore them to calibrate their use of the military tool with precise policy objectives. The politics of prudence calls for the application of traditional *jus ad bellum* criteria such as proportionality of ends, last resort (because waging war is usually more costly than other measures) and the likelihood of success. However, the key difference between realists and Just War theorists is that, for a realist, a military action is legitimate if it enhances the state's vital national interest or contributes to its survival. For the realist, all other questions are secondary.

In many respects, the US response to September 11 was guided by this realist logic of war. Since then the US has argued that legitimate states must be free to make their own decisions about the best way to defend themselves from terrorism. For example, after an Israeli attack on what it claimed were terrorist training camps

inside Syria, George W. Bush told the world that 'Israel *must not feel constrained* in terms of defending the homeland'.<sup>14</sup> The basic idea is that the defence of the state is a good in itself and needs no further justification. As terrorists threaten both the state's citizens and the way of life that it protects, a war against particular groups of terrorists is justified in terms of the state's right to preserve itself.

One of the questions that realists and Just War theorists disagree on is the means that may be used to defend the state.<sup>15</sup> The Just War tradition places important moral constraints on the types of force that may be used, whilst George W. Bush suggested that there are few universal *moral* constraints on the use of force in self-defence.<sup>16</sup> The principle of necessity suggests to realists that moral principles should be sacrificed to guarantee success at as minimal a cost to the defending state as possible. These arguments echo General Sherman's famous claim that 'war is hell' and 'those who brought war into our country deserve all the curses and maledictions a people can pour' whilst those waging a defensive war deserve no curses at all, regardless of how they conduct themselves.<sup>17</sup>

Since September 11, the US and its allies have made this argument to justify the inadvertent but foreseeable killing of civilians in Afghanistan and Iraq. A common refrain amongst government officials was that, as both wars were defensive, the US and its allies bore no responsibility for the non-combatant deaths they inflicted. Instead, the responsibility for non-combatant suffering was said to lie squarely with al-Qaeda and the political leaderships in Afghanistan and Iraq. Tony Blair, for instance, told the Iraqi people that 'our enemy is not you but your barbarous rulers', insisting that the suffering endured by ordinary Iraqis was a result of their government not the invaders.<sup>18</sup> One of the consequences of this belief is that whilst it is clear that US forces do not pursue a policy of systematic targeting of non-combatants, they have not always investigated the killing of non-combatants as carefully as they might. Human Rights Watch, for example, conducted a detailed investigation of 20 non-combatant killings in Baghdad after the termination of the Iraq war, all of which it deemed 'legally questionable'. It found that the US military had only investigated five of the cases and that 'US soldiers at present operate with virtual impunity in Iraq', undermining the rights of Iraqi non-combatants.<sup>19</sup>

At the foreign policy level, the belief that defensive wars are inherently just has produced a tendency to override or reject settled norms. In the Iraq case, the US argued that its national interests took priority over the will of international society expressed by the UN Security Council in deciding whether or not Saddam Hussein was complying with Resolution 1441 and whether his regime's non-compliance warranted the use of force against it. The US has not only opposed the creation of an International Criminal Court (ICC), set up to punish grave breaches of the laws of war and international humanitarian law, it has actively attempted to undermine the Court's work by persuading member states to conclude bilateral agreements granting immunity to US personnel.<sup>20</sup> Similarly, many international lawyers argue that the treatment of prisoners seized in Afghanistan at Guantanamo Bay contravenes international law on the treatment of prisoners and some aspects of their treatment may also breach American law.<sup>21</sup>

These instances of rule-breaking since September 11 have been justified in terms of the necessity of defeating an immediate threat to US security. This realist argument holds that adhering to *jus ad bellum* and *jus in bello* criteria would reduce the effectiveness of the anti-terrorism campaign. As Steven Forde put it a long time before September 11, realists appear to hold the view that 'acting in accordance with the international common good when others refuse to do so is harmful, and perhaps even immoral, considering the state's obligation to the safety of its members'.<sup>22</sup>

There are a number of problems with this position. First, by disregarding standards of behaviour that have taken decades if not centuries to evolve, the US risks undermining the rule-governed international order and the practical efficacy of the *jus ad bellum* and *jus in bello* constraints. The power of these constraints derives from their incorporation into customary practice. In the fifth century BC, the Athenian decision to break the customs of war for strategic purposes led to the complete erosion of those customs to the long-term detriment of both the Athenian empire and Greek civilisation as a whole. As war between Greek *poleis* became more violent and military strategies aimed at undermining the enemy's social cohesion, so Greek international society was weakened from within and was eventually irreparably destroyed by Persian and Roman forces.<sup>23</sup> The restraints on war contained in the *jus ad bellum* and *jus in bello* principles can only be effective if state leaders, military commanders and individual soldiers attempt to heed them as far as possible. Restraint in war quickly evaporates when powerful actors choose to overlook them in the name of necessity.

The second problem with the realist response to terrorism, closely related to the first, is that rule-breaking and unjust behaviour in the name of necessity will encourage our adversaries to use similar tactics and leave us without a common moral language to evaluate the justness or otherwise of such actions. There are at least two good reasons to follow embedded moral and legal rules.<sup>24</sup> First, these rules are the products of customary practice and ethical reasoning. We should obey the law whenever we can, because in a rule-governed international society it is simply the right thing to do. Second, every time the US and its allies are seen to be acting illegitimately, they play into the hands of terrorist recruiters.

This brings us to the third objection: unjust conduct in war will make it more difficult to negotiate a just end to the war and build a self-sustaining peace afterwards. As Augustine argued, the principle of right intention demands that war may only be waged to serve the cause of peace, not for riches or glory. Thus, Augustine advised: 'be peaceful, therefore, in warring, so that you may vanquish those whom you war against, and bring them to the prosperity of peace'.<sup>25</sup> So, as James Turner Johnson points out, we should conduct ourselves justly in war because that is the only way we can secure a lasting and genuine peace.<sup>26</sup> Unjust behaviour, particularly when conducted by powerful members of international society, can create precedents that others may follow and decreases the practical impact of moral language.

The final problem is that describing a variety of different violent actions as all

comprising a 'war against terror' may undermine the initially just cause of punishing those responsible for September 11 and preventing further atrocities. Moreover, it raises the problem of abuse that troubled early international jurists and continues to trouble international lawyers today. George W. Bush's use of the 'war against terrorism' to justify the invasion of Iraq despite the lack of any clear link between the Iraqi regime and anti-American terrorism is an example of the inherent danger of defining the war on terror too broadly. Whatever the merits and problems with the US's Iraq policy, it is reasonably clear that George W. Bush's claim to Congress that it comprised a further element of the war against terrorism was flawed. There are two principal problems with this strategy of lumping many different policies together under the rubric of the 'war on terror'. On the one hand, it undermines the just cause of the war against terrorism. If war is only justified when it is perpetrated against wrongdoers and intended to further the cause of peace, a 'war on terrorism' directed against a state that (despite its many other wrongs) has not aided and abetted terrorist attacks on the US becomes less just. Thus, the consequence of justifying the war in Iraq as part of the war against terrorism is that it casts doubt upon the justness of the latter, eroding the international support and cooperation necessary for the successful prosecution of that war. On the other hand, waging war against terrorism presents an opportunity for a variety of actors to justify acts, which would otherwise be deemed unjust, as legitimate and necessary contributions to that war. The abuse of human rights, sometimes including the torture and killing of civilians, has been justified as necessary to the prosecution of the war against terror.<sup>27</sup>

Realists therefore start from the position that there are no universal moral limits on what a state might do to protect itself and its citizens. Moreover, moral concerns are secondary to prudential considerations. As a result, policy-makers should only be influenced by calculations about the best way to pursue the national interest. They should not allow themselves to be influenced by abstract moral principles because doing so may undermine the effectiveness of coercive activities, needlessly prolonging the war against terrorism and increasing its potential costs. Moral responsibility for the damage caused rests with those that we are waging war against because it is they that force us to use force. It is evident that this logic has partly guided US policy after September 11 in some important respects. However, it is a logic that is both morally troubling and politically dangerous. Most notably, realist strategies risk undermining the moral and legal restraints on war that protect our society as well as other peoples' and, just as importantly, give us a common moral language to engage in dialogue about the justness of particular activities.

### Pacifism

A second type of response to the September 11 attacks is to reaffirm the belief that the use of force is always unjust. In recent years, two similar yet distinctive means of doing this have been developed. Deontological pacifists argue that killing is

intrinsically wrong and that there are no situations, real or imaginary, in which resort to war would be the lesser evil.<sup>28</sup> Today, however, there are very few deontological pacifists outside theological circles. Instead, many writers propose a form of consequentialist pacifism, or what Paul Ramsey described as *just contra bellum* and the American Catholic bishops labelled the 'presumption against war'.<sup>29</sup> This is the idea that although there may be imaginary circumstances in which war may be the lesser evil, the moral constraints on war are interpreted in such a way as to make it highly unlikely that any war would meet the criteria. For both types of pacifist, the war on terror is unjust.

Consequentialist pacifism begins from the proposition that war is always morally suspect though in some imaginary circumstances it may be necessary. Within international relations, advocates of this position tend to make one of two arguments. On the one hand, writers such as Martin Shaw and Ken Booth insist that the Just War tradition is little more than a rhetorical device that statesmen use to justify war. 'Just War is just war', opined Booth, whilst Shaw argued that Just War thinking has had little impact on the constraints of war but has been used to give war a degree of moral legitimacy it does not deserve.<sup>30</sup>

If we use the 'presumption against war' or a moral commitment to non-violence as the starting point, the use of force should be the last policy tool that is turned to. Martin Shaw has argued for an approach based on 'law over might' where bodies like the International Criminal Court are given the power to pursue terrorists through global judicial processes.<sup>31</sup> Terrorism, he argues, is a criminal problem, not one that can be addressed by war. A further argument is that terrorism can only be addressed through policies designed to tackle its root causes. In the case of the 'causes' of al-Qaeda, such writers point to the need to resolve the Palestinian problem, the perceived anti-Islamism of the West, and the grave inequalities of wealth that characterise the global economy. Unlike deontological pacifists, these writers do not argue that force is always unjustifiable. Instead, they significantly raise the threshold at which Just War criteria are considered met and conclude that the war against terror is imprudent and doomed to fail.<sup>32</sup>

The most sophisticated writer in this genre is Richard Holmes, who attempts to blend deontological and consequentialist forms of pacifism. Holmes rejects the deontological position that killing is wrong per se, but argues instead that killing the innocent is wrong. He points out that, although the Just War tradition prohibits the intentional killing of non-combatants, in practice non-combatants are always killed in war and are likely to be so in the foreseeable future. Thus, Holmes combines the deontological prescription, accepted by most military ethicists, that non-combatants may not be justly targeted with the observation that non-combatants are always killed in war.<sup>33</sup>

There are a number of problems with both deontological and consequentialist forms of pacifism. Both call upon governments to abrogate their moral responsibilities by denying that the use of force can ever be justified. This reflects the position of the earliest Christians who, expecting the immanent return of Christ, often removed themselves from public life and adopted a pacifist position.<sup>34</sup> Such a

position became problematic when the Roman empire itself became Christian and the primary defender of that faith against the empire's pagan enemies. Those in public office have a moral responsibility to protect the wider community. In the absence of a world government, risking the lives of others to satisfy one's own moral predilections by rejecting the possibility of using force is to abrogate the responsibilities of government.<sup>35</sup>

Advocates of these positions also offer very little by way of restraints on the conduct of war. If all war is unjust, or if every element of the war against terror is unjust, there is little likelihood of restraint in war. This makes both deontological and consequentialist forms of pacifism intellectually problematic and practically dangerous. An ethics of war that cannot hold an insightful discussion into the actual conduct of war will remain peripheral in wartime. If we simply reject the war on terror as unjust, we risk inadvertently conceding a free hand to those who support the war to execute it free of moral restraints.

Finally, few would argue with the merit of some of the alternative policies put forward by those who oppose the war and it would be fair to say that some policy proposals – such as strengthening the powers of the International Criminal Court to deal with international terrorists – would make an important contribution to promoting global cooperation against terrorism. Whilst such policies *may* contribute to ridding the world of terrorism in the long term, it is doubtful whether they would succeed in removing the threat posed by al-Qaeda in the immediate term.

An alternative position, which overcomes some of these problems, is the so-called 'presumption against violence'. The most sophisticated proponent of this doctrine in contemporary debates is Rowan Williams, the Archbishop of Canterbury. According to the Archbishop, writers such as George Weigel,<sup>36</sup> mistake the teachings of Thomas Aquinas when they argue that the Just War tradition contains no 'presumption against violence'. Instead, the Archbishop argues that Aquinas did start out with the assumption that violence is evil, 'which is only resolved by appeal to the duty of the ruler to preserve peace internally and externally by the literal use of the sword'.<sup>37</sup> Understood in this sense, the use of coercive violence always requires persuasive public justification if it is to avoid the appearance of being an 'arbitrary infringement of natural justice'.<sup>38</sup> This requirement for public justification places two further requirements on those who wish to use force to defend themselves against terror. First, it is not enough to justify the use of force in parochial terms. Instead, war must be justified in a way that is intelligible to all humanity. Concepts such as 'self-defence' should not be selectively interpreted to suit the short-term interests of the powerful – as seemed to be the case in the American National Security Strategy, which claimed an exclusive right of pre-emptive self-defence for the US – but in a way that recognises our *common* understandings. Second, moral arguments about recourse to war do not exist in a vacuum, but rather sit alongside a global legal framework. A case for war needs to find a balance between moral and legal claims, particularly when the two collide.

The Archbishop of Canterbury therefore provides a more useful way of utilising the 'presumption against war' idea that has been developed by international

relations specialists and some moralists. It is important to recognise, the Archbishop demonstrates, that the Just War tradition offers criteria for assessing legitimate *exceptions* to a general moral position that violence is evil. As a result, it is important that our moral arguments are successful in persuading others and that in deciding whether or not to use force we are able to balance moral responsibility with the need to act lawfully. This provides a useful introduction to the third way of understanding the ethics of the war against terror: utilising the Just War tradition as an ethics of political responsibility.

### The Just War

There are at least three good reasons for using the Just War tradition to frame discussion of the legitimacy of the war against terror. First, academics, politicians and public commentators in the West have used the language and concepts of the Just War tradition to shape political debate. Political leaders in the US, UK and Australia have repeatedly claimed that their cause is just in justifying the wars in Afghanistan and Iraq. Similarly, opponents of the military response to September 11 used the tradition to make the contrary argument. Second, even when not consciously referred to, the Just War tradition is deeply embedded in the 'Western way of war'. Ideas concerning non-combatant immunity, legitimate authority and proportionality have shaped the way Western societies wage war for some time. Saying that the Just War tradition is 'embedded' in the way that Western states, societies and militaries think about war is not to say that they always conduct themselves in a just fashion. Even at the peak of their influence, classical Just War writers could not determine the actual course of war. What they could do, and what the tradition still does today, is provide a common language with which to evaluate the competing moral claims of war.

The third reason for using the Just War tradition to evaluate the legitimacy of the war against terrorism is that this moral tradition approximates closely to agreed international standards of behaviour in war and therefore, whilst it has a Western and Christian heritage, the tradition today stretches beyond the borders of Christendom. In one form or other, most of the world's state and social leaders accept the basic principles of the Just War tradition.<sup>39</sup> As James Turner Johnson pointed out, the international law on armed conflict and international humanitarian law are both 'deeply consistent with the moral requirements of just war'.<sup>40</sup> For these reasons, the Just War tradition is the closest thing we have to a 'common morality' on the use of force.<sup>41</sup>

How, then, are we to make use of the Just War tradition to evaluate the justness of the war against terror? First of all we need to ask whether all terrorism is unjust and to understand why. Then we need to evaluate the legitimacy of the war on terror itself.

### Is terrorism always unjust?

'The terrorist', an anonymous writer wrote, 'represents a new breed of man which takes humanity back to prehistoric times, to the times when morality was not yet born.'<sup>42</sup> James Turner Johnson insisted that:

terrorism by its nature aims to undermine and erode these goods [of political communities] and thus attacks all people who benefit from them . . . the kind of violence we today call terrorism is evil in its very nature, because it attacks the foundations of political community itself . . . There is no justice in terrorism, only injustice.<sup>43</sup>

We cannot, however, simply assume that a war on *all* terrorism is justified by the horrific actions of one particular terrorist organisation unless we have a common understanding of what terrorism actually is.

Launching a 'war against terror' poses two problems. First, are we certain that all forms of 'terrorism' are manifestly unjust and by their very existence and modus operandi provide grounds for a just cause for war? Classical Just War theorists differed considerably on what they considered to be just causes for war. Just causes may entail (1) the avenging of a wrong previously committed, (2) the restoration of goods unjustly seized, (3) responding to the violation of natural law, (4) the punishment of wrongdoers, (5) the defence of the polity and the people within it and (6) the prevention of injustice.<sup>44</sup> To claim that a war on terror is justified, then, we should first of all be sure that there is a just cause by balancing the contemporary context with these six moral ideas.

The second problem that announcing a global war against terrorism creates is one of proportionality. We must ask whether a war against terrorism is a proportionate response to the 11 September attacks. In other words, will the expected good produced by the war outweigh the probable evil caused by it?<sup>45</sup> The answer to this question is linked to our answer to the question of whether all terrorism provides cause for justified war. If our answer is in the affirmative, waging an endless war against terrorism may be a proportionate response. If, however, we believe that we can only answer the first question by reference to specific groups and campaigns, then a war against terrorism cannot be proportionate.

Ascertaining whether terrorism provides just cause for war is problematic because it is an essentially contested concept. The term is most often used as a political label to de-legitimise one's opponents. Israel labels Palestinians who bomb civilian targets as 'terrorists', yet refuses to use this label for the Zionist revolutionaries who in July 1946 blew up the King David Hotel in Jerusalem, killing 91 people. Unsurprisingly, because of the politicised nature of the term 'terrorism', there are dozens of definitions of what it is. For our purposes, it is worth noting four elements that are present in most definitions:

- (1) Terrorism is politically motivated violence.<sup>46</sup>

- (2) It is conducted by non-state actors.<sup>47</sup>
- (3) It intentionally targets non-combatants.<sup>48</sup>
- (4) It achieves its aims by creating fear within societies.<sup>49</sup>

We need to ascertain which of these elements are unjust and identify them in the actions of our adversaries if we are to wage a justified war against terror.

The first element, that it be *politically motivated* violence, serves to distinguish terrorism from random criminal violence. Violence may be justified either by recourse to the just *political* causes briefly listed earlier or by the fact that it is judicially sanctioned by an authority that holds jurisdiction over those that violence is wielded against. Being politically motivated violence therefore contributes to the legitimacy of terrorism, suggesting that we may only respond with war when our rights or those of our friends are infringed. The most crucial question, and one that dominated Just War thinking in the Middle Ages, however, is the question of who has the authority to use violence for political purposes.<sup>50</sup>

The second element of terrorism, that it is conducted by non-state actors, partially challenges its justness. From Augustine to the development of positive international law the question of who had the right to wage war was the most significant question that theologians and jurists faced. Today, there is a widespread presumption that the sovereign state is the only authority capable of authorising legitimate political violence. The fact that terrorism is waged by non-state actors therefore renders it unjust, the argument goes. However, political violence initiated by non-state actors is justifiable in two cases. First, the liberal idea that sovereignty is bestowed by the will of the people means that a people must have the right to overthrow an oppressive government.<sup>51</sup> Decolonisation helped make positive international law ambivalent on the question of whether peoples had a right to revolt against oppressive or foreign rulers.<sup>52</sup> In recent years, the powers currently leading the war on terrorism have repeatedly used this liberal argument to justify military intervention in Haiti, Kosovo and elsewhere. Second, it is legitimate for non-state actors to use force when the sovereign has either dissolved (Somalia) or been unjustly overrun by a foreign power (wartime France). In the former case, there is no authority with the jurisdiction to raise public war. As a result, the authority to wage war may be devolved to people who are able to command the loyalty of significant parts of the community. In the latter case, an individual's inherent right to self-defence extends to the formation of resistance movements.

It is the third element of terrorism that renders it manifestly unjust: the intentional targeting of non-combatants.<sup>53</sup> The principle of discrimination is one of the most steadfast of all Just War principles and is expressed clearly in contemporary international law in the Geneva Conventions. It holds, quite simply, that non-combatants are immune from direct attack. The first attempts to define groups of people who were to be immune during war came in the thirteenth century under Pope Gregory IX. Then, people were granted immunity if the social function they fulfilled was essential for the life of the community (peasants who worked on the land) or if they held divine office (churchmen).<sup>54</sup> By Vitoria's time, that pro-

scription was extended to all non-combatants.<sup>55</sup> Any act of war that either directly aimed to kill non-combatants or used non-combatants as a means to an end was unjust. It is not necessary to labour this point. Suffice it to say that non-combatant immunity is the foundational principle of the Just War tradition and is also clearly enshrined in positive international law (the 1977 Geneva Protocol).

The final element of terrorism is its ambition to spread fear. The aim is to create a general context of societal fear that will coerce those in authority to accede to the terrorists' demands. It is the spread of fear, Elshstain argues, that makes terrorism particularly dangerous because 'none of the goods human beings cherish – including politics itself – can flourish absent a measure of civic peace and security'.<sup>56</sup> There are two principal objections to the use of fear or terror as a method of war. First, it breaches the Kantian injunction that humans should not be used as means. Second, it threatens the welfare of civil society as a whole, breaching the discrimination principle. However, it is counter-intuitive to suggest that pursuing policy change through the *threat* of violence is less justified than actually using violence. States use 'coercive diplomacy' on a regular basis: using the threat of force to persuade others to change their course of action. The consequences that Elshstain mentions may also be the foreseeable consequence of a justified war.

Once we break down our understanding of terrorism, it becomes clear that not all of the features associated with it are immoral. In certain circumstances, where the conditions of *jus ad bellum* are satisfied, the use of violence for political purposes and the use of fear to coerce authorities are not necessarily immoral. Similarly, there are two types of circumstance where the use of political violence by non-state groups is not by definition immoral: in order to overthrow an oppressive government and in cases where the sovereign has dissolved or has been unjustly removed by a foreign power. The only element of terrorism that marks it out as immoral is its intentional targeting of non-combatants. My point here is that a 'war on terrorism' is not justified because not all of the phenomena commonly labelled 'terrorist' are unjust. In particular, not all the groups that have been labelled 'terrorist' in the last century or so had a policy of systematically killing non-combatants, and not all institutions responsible for intentionally and systematically killing non-combatants have been labelled 'terrorist'.

To sum up this section, I have argued that a war against terrorism cannot be justified because it is disproportionate. It threatens to expand beyond those groups whose acts have given us a *jus ad bellum*, making the response disproportionate. The one aspect of terrorism that is unquestionably wrong is the intentional targeting of non-combatants, and without examining each case it is impossible to determine whether or not all the groups we are waging war against are guilty of this. It is therefore not possible to justify a variety of activities from intervention in Afghanistan to the invasion of Iraq and a unilateral right of maritime interdiction simply by labelling them part of a broader war against terror.<sup>57</sup>

A war against particular terrorists may nevertheless be justified if one of two criteria is met. First, if the state initiating the war is doing so in self-defence against

enemy combatants who have committed a prior wrong or are demonstrably in the process of planning to execute a wrong. Second, if the wrong committed by the terrorist organization constitutes such a breach of natural law that a moral responsibility to act falls on the members of international society, and the proportionality principle is adhered to.

### The Just War as an ethic of political responsibility

As I suggested at the beginning of this article, the Just War tradition provides both a set of commonly held criteria that we may use to evaluate the morality of our government's actions and a guide of morally responsible political action for statesmen. We should not, however, think of Just War principles as a coherent set of ideas that we can simply use as a checklist to evaluate particular instances of violence. The principles have evolved and changed over the past few hundred years and when using Just War ideas to reflect on the morality of contemporary war we should also use the nature of contemporary war to evaluate Just War principles. In particular, we should take seriously the guidelines set down by international law because they reflect a broad degree of consensus about the ethics of war, though the law does not cover the full spectrum of moral reasoning. As a result, we should not ask whether Just War considerations 'override' legal norms when the two sets of ideas seem to collide, nor vice versa, but instead we should seek an appropriate balance between these different sets of claims.

At the outset, it is important to reiterate my earlier claim that a war on terror is disproportionate. I disagree with Elshstain, who argues that the war may be proportionate if the US and its allies avoid the use of weapons of mass destruction (WMD) and the direct targeting of civilians, for three reasons.<sup>58</sup> First, as I noted in the previous section, given that 'terrorism' is a contested concept, it is not at all clear that all those who are labelled 'terrorists' provide just cause for war. Second, the war on terror is disproportionate because it is a war on a tactic not a specific group of people. When Japan bombed Pearl Harbor, the US declared war on Japan, not on surprise attacks. Similarly, in this case, a proportionate response to the September 11 atrocities would be to declare a war on al-Qaeda and its supporters. If we do not know who our enemy is, we cannot wage a discriminate and proportionate war against them. Finally, the war on terror is disproportionate because it can be used to justify actions that on closer inspection have very little to do with satisfying the just cause created by September 11. Thus, the invasion of Iraq, the doctrine of pre-emptive self-defence and the policy of maritime interdiction, all of which were justified in terms of the war against terror,<sup>59</sup> contributed nothing to the pursuit of the just cause and were therefore unjustifiable elements of the war.

The idea of a war on terror may be inherently unjust, but that does not rule out the possibility that individual components of that war, such as the interventions in Afghanistan and Iraq, might be just. It is important therefore to think of the war not as one endless war but as a series of separate wars. An action designed to combat

terrorism must be directly related to a prior wrong or a wrong about to be committed. The Just War tradition allows for the possibility of pre-emptive war, but the criteria that must be fulfilled are strikingly similar to those laid down by customary international law: the threat must be demonstrably imminent and appropriately severe. If the use of force in particular circumstances is to win legitimacy under the rubric of the war on terror, therefore, one of two requirements must be fulfilled: (1) the object of the counter-terrorist war must have either already launched an attack or be in the process of planning an attack, and the imminence must be demonstrable. Without this caveat, the right of pre-emptive self-defence could be abused to support unjust aggressive wars. (2) When terrorists systematically target non-combatants they violate moral principles that are common to all. Such principles, enshrined in natural law, may be upheld by any public authority (not just the state directly threatened).<sup>60</sup>

States do not, however, have an unqualified legal or moral right to wage war. As the Archbishop of Canterbury argued, classical Just War teaching was mostly written at a time when there was very little in the way of written or customary international law. Today, there is a wide body of law governing recourse to force in international society. In many (but not all) situations, the justifiable use of force is compatible with the dominant view that there is a general legal ban on the use of force with two exceptions: self-defence and collective enforcement authorised by the Security Council. Condition (1) identified in the previous paragraph correlates closely with the right of self-defence. The US and its allies justified Operation Enduring Freedom in Afghanistan in this way and the rest of the world broadly accepted their justifications.<sup>61</sup> The central difficulty emerges in a situation like that of condition (2), but where the UN Security Council refuses to authorise collective action. In what situation is it morally justifiable to attack a group that targets non-combatants when those non-combatants are not one's own citizens or citizens of allies, and where the Security Council refuses to authorise collective action? Our answer must be dependent on the circumstances of each case. However, it seems clear that the more states the potential intervener is able to persuade of its case, the more legitimate the case is. Moreover, the intervener must demonstrate that the terrorists have systematically violated the rights of non-combatants on a significant scale; that the crisis is immediate and warrants the use of force to stem it; and that the intervener is acting with 'right intent'. That is, the intervention is clearly directed against the 'terrorists' and has the restoration of peace as its primary aim. If these conditions are met and the intervener is able to persuade others of its case, it is possible to envisage a case where a war is launched against particular terrorists that is neither in self-defence strictly speaking nor authorised by the Security Council, but is nevertheless just.

Even if it is possible to justify recourse to force against particular 'terrorist' groups there remain important moral limits on the exercise of force. In particular, any use of force must be both discriminate and proportionate. The discrimination principle, enshrined in the Geneva Conventions and reinforced in the 1977 Geneva Protocol, holds that the intentional targeting of civilians is unjust.

It is the principle of discrimination, we noted earlier, that makes terrorism itself appear manifestly unjust. The key element of the discrimination principle is not the *outcome* of a particular action (the ethics of likely outcomes need to be evaluated according to the proportionality principle), but the *intent*. A politician or military commander must not intend to kill non-combatants when launching a military attack, nor use the death of non-combatants to achieve military objectives. There are a number of situations, however, where a military commander may target a facility used for military purposes in the knowledge that non-combatants are also likely to be killed. This may be because the facility is located within a civilian area or because it is a dual-use facility. In these cases, the doctrine of double-effect comes into play. Double-effect holds that non-combatant injuries are justifiable, even if they are foreseen, so long as non-combatants are not the objects of attack. The problem with the doctrine of double-effect is that in the hands of a determined military or political leader, any act – no matter what the costs to non-combatants – could be justified and any injury to non-combatants excused as unintentional collateral damage. For example, the Nazis justified the attack on the city of Coventry by arguing that they were aiming at weapons production facilities.<sup>62</sup> Two considerations therefore need to be borne in mind. First, as Michael Walzer suggested, double-effect should not in itself exonerate leaders. It is not enough to simply say that non-combatants are not being deliberately targeted; there is a need to take measures to protect non-combatants as much as possible. Walzer goes as far as to argue that the lives of soldiers should be risked if that would mean affording greater protection to non-combatants.<sup>63</sup> Second, it is important to bear in mind that acts that may be ‘discriminate’ may nevertheless be disproportionate and therefore unjust. Attacking a facility with little military utility that is located in a civilian area, when it is known that the attack will cause civilian casualties, is unjust not because it is indiscriminate but because it is disproportionate.

When we turn to the war against terror the best case study is Operation Enduring Freedom in Afghanistan. Given the criteria outlined above for determining whether a particular military action constitutes a legitimate aspect of the ‘war against terror’, it is clear that the invasion and occupation of Iraq cannot be justified in this way but that the war in Afghanistan can. According to Jean Bethke Elshtain, ‘it is clear that every effort is being made to separate combatants from non-combatants, and that targeting civilians has been ruled out as a war fighting strategy’.<sup>64</sup> It is easy to agree with the second part of Elshtain’s argument. The US and its allies expressly ruled out the targeting of non-combatants and each fixed target was approved by a military judge advocate before the military commander approved it. Where Operation Enduring Freedom involved the targeting of fixed facilities by the US Air Force, the argument that non-combatant deaths were caused by either mistakes or were the collateral (i.e. indirect) results of attacks on military-related installations is a convincing one.<sup>65</sup> However, it is the first part of Elshtain’s argument that raises a number of problems: did the US and its allies make ‘every effort’ to separate combatants from non-combatants?

Asking this question of Operation Enduring Freedom raises two problematic

issues that Elshain herself recognises but thinks are unimportant. They both relate to the question of whether the US and its allies increased the potential harm to Afghan non-combatants in order to protect their own soldiers.<sup>66</sup> The first problem was caused by the decision not to deploy significant numbers of ground troops to combat Taliban and al-Qaeda forces on the ground but to forge an alliance with General Dostrum's 'Northern Alliance' forces instead. Dostrum's forces have a long record of deliberately killing non-combatants and there is ample evidence to suggest that they prosecuted their war against the Taliban and al-Qaeda in 2001/2 in precisely this fashion. In Kabul, Mazar-i-Sharif and Kunduz, Northern Alliance forces engaged in revenge killings once the fighting had ceased and the Taliban and al-Qaeda leaderships had withdrawn. In these three cities, upwards of 1000 people, many if not most of them non-combatants, were killed by Northern Alliance forces after the end of combat. As a point of contrast, when the battle moved from Kandahar into the Tora Bora mountain range, the US took more direct control of proceedings on the ground and the treatment of ex-combatants and non-combatants improved considerably. American forces set up a prisoner-of-war camp and encouraged their Afghan allies to accept surrenders and take prisoners.<sup>67</sup> This suggests that a greater American commitment on the ground would have contributed much to the protection of those rendered *hors de combat* and ordinary non-combatants.

The second problem is that, in order to protect their own forces, the US military relied heavily on unverified intelligence provided by Afghans for the identification and targeting of mobile targets or so-called 'targets of opportunity', rather than placing American troops on the ground to search for and verify military targets. As a result of the flawed and unverified intelligence provided by Afghans, the US launched a number of attacks against civilian targets. Most famously, this included the bombing of a wedding party. Initially, the US denied that it had bombed the party and then claimed that it was a meeting of Taliban officials. Eventually, after considerable media scrutiny, it was admitted that the target had been a wedding party and that the decision to attack it was based on flawed and unverified intelligence provided by Afghans.<sup>68</sup>

It seems clear from these two cases that although the US was careful to be discriminate in its targeting, it did not make 'every effort' to avoid non-combatant deaths. Elshain recognises this argument but passes over it very quickly indeed, after arguing that the US must provide recompense for civilian casualties, and overlooks the fact that it somewhat contradicts her earlier claim that the US did make 'every effort' to be discriminate.<sup>69</sup> However, it seems clear that a pattern has emerged whereby the protection of US combatants takes precedence over the protection of non-combatants near the areas of operation. The question therefore, is whether by using judge advocates to select targets the US is doing enough to protect non-combatants. The answer seems to be that non-combatants will be protected so long as their protection does not require taking measures that may endanger the lives of soldiers. This is a morally problematic position because it values the life of combatants more than non-combatants. As Walzer points out, there must be a limit

on the number of soldiers we are prepared to risk to save enemy non-combatants.<sup>70</sup> We are not required to jeopardise the overall war aim or to expose soldiers to unreasonable risks. In the Afghanistan case, however, it is unlikely that using US ground forces instead of Northern Alliance forces, and American forward spotters rather than flawed Afghan intelligence, would have either massively increased the number of US casualties or jeopardised the war aim. Indeed, subsequent evidence suggests that Northern Alliance forces proved inept at tracking down the leadership of al-Qaeda and the Taliban and that important opportunities to apprehend those responsible for September 11 were lost.<sup>71</sup> Had US troops been risked, the war against terror might have been prosecuted more effectively, as well as legitimately, and those responsible for September 11 brought to justice.

The second core element of *jus in bello* is the proportionality principle. In its *jus in bello* form, proportionality holds that a military act is only legitimate if the importance of the object targeted outweighs the damage caused by the attack. The key aspect of proportionality is that 'what is *undertaken* must correspond to what is *purposed*, and what is *purposed* must correspond to what is *reasonably complained of*'.<sup>72</sup> This involves two moves. First, we must satisfy ourselves that any particular act of violence is intended to further the accomplishment of a just cause. Classic Just War writers did not discuss whether a war waged without a just cause could be proportionate because all violence in an unjust war is unjust.<sup>73</sup> Having done so, we need to assess whether the military value of a particular attack outweighs the broader costs of that attack. Elshstain's discussion of proportionality in Afghanistan is very brief. She begins by ruling out the use of WMD against civilians because of their inherently disproportionate nature, and moves on to argue that the US must have acted proportionately because the civilian infrastructure has been rebuilt so quickly.<sup>74</sup>

Elshstain is of course correct to argue that WMD should not be used against civilians, but this is an argument based on the principle of discrimination not proportionality. A proportionality argument would question the use of such weapons against even military targets because the costs of using them, both in terms of the unintended deaths of non-combatants who were unfortunate enough to be near the blast range and the environmental damage caused by such weapons, may exceed the military value of the target. This is an easy argument to make, though, because the US and its allies did not plan to use WMD. Much more difficult proportionality questions are raised by the use of depleted uranium weapons and heavy yield conventional weapons such as the so-called 'daisy cutters'. The US and its allies have still not confirmed whether or not depleted uranium weapons were used. Depleted uranium warheads were used in Kosovo and elsewhere and are capable of piercing thick armour. However, the effects of the weapon extend beyond the initial blast to lasting environmental damage caused by contamination. There is also evidence to suggest that the contamination of water supplies may have a profound effect on the health of the local population as a whole.<sup>75</sup> Depleted uranium weapons may be both indiscriminate (in that the nature of the weapon itself makes it impossible for it to be targeted against combatants alone) and

disproportionate (in that the weapon's long-term cost exceeds its short-term military utility). 'Daisy cutters' are enormous conventional bombs, weighing some 6800 kilograms and measuring over 11 feet in length. The bomb is designed to destroy *everything* within a 500-metre radius.<sup>76</sup> In Afghanistan, they were used against al-Qaeda and Taliban forces in the Tora Bora mountains, well away from population centres. The use of these weapons against concentrations of enemy combatants, away from population centres, is not disproportionate, though targeters need to ensure that the military value of a particular target outweighs the massive destruction that will be brought to bear on it.

## Conclusion

The Just War tradition provides a useful way of assessing the morality of the war against terror. By contrast, neither realism nor pacifism provide satisfying perspectives because they are unable to interrogate the legitimacy of the reason for war and they fail to provide meaningful moral constraints on its conduct. For realists, any war that furthers the national interest is 'just'. To satisfy realist concerns, statesmen should address prudential questions before choosing to wage war. Once involved in war, leaders need only be constrained by prudence and military necessity. This does not necessarily mean that realist war is unregulated, because prudence itself contains limits. For instance, a realist warrior may restrain his or her actions in the expectation that the enemy will reciprocate. In practice, such constraints rapidly evaporate in war.

Similarly, pacifists offer little insight into the legitimacy of the decision to wage war and the conduct of war once started. By refusing to countenance the idea that war may be just in certain circumstances or by interpreting the Just War criteria so stringently that it is unimaginable that a war could be justifiable, these positions offer little insight into the moral dilemmas that those with public responsibilities must confront. Although a rejection of violence is a worthy individual goal, it is not something that a representative of a political community can adopt whilst international society remains anarchic. Pacifism offers less guidance than realism on the question of how war should be conducted. By rejecting war outright, pacifists are unable to engage in meaningful dialogue about the conduct of war.

By contrast, the Just War tradition offers a framework that provides both a common moral language and a guide to how political and military leaders should prosecute their war mindful of the need to minimise the damage. Unlike realism and pacifism, the Just War tradition offers a fruitful way of evaluating the legitimacy of the war against terror. Although the US and its allies tend to conduct themselves with great concern for the principles that inform the *jus ad bellum* and *jus in bello*, two types of problem were identified with the war against terror.

First, a war against terror cannot be just because on the one hand we do not know that all terrorism provides a just cause for war and, on the other hand, a war against any group labelled 'terrorist' is a disproportionate response to September 11. If we

are to use the Just War tradition to evaluate the legitimacy of the war against terror, it is important to begin by asking whether all terrorism is unjust. It is the terrorist tactic of directly targeting non-combatants to accomplish political goals that makes it unjust.

The direct targeting of non-combatants by 'terrorists' can provide a just cause for war in one of three circumstances: (1) where the victims of terror attacks are citizens of the state launching the military campaign; (2) where the appropriate global body authorises collective action on behalf of the world community; and (3) where the killing is so great that it amounts to a supreme emergency that can only be halted by force. In all three cases the intended target of the intervention must be the perpetrator of the wrong, and the intervention must be linked to specific wrongs either already committed or demonstrably imminent. Although the Just War tradition permits pre-emptive self-defence, it is incumbent upon those undertaking it to persuade others of the imminence of the threat and necessity of force. Given this, it is clear that Operation Enduring Freedom in Afghanistan was a legitimate response to September 11 because it directly attacked the perpetrators of the terror attacks and their supporters. However, the invasion of Iraq cannot be justified in this way because it was not aimed directly at the perpetrators of the prior wrong or their supporters. Because a war against terror is inherently disproportionate, political leaders must justify their military actions on the merits of each campaign. A war against terrorists must directly target either al-Qaeda or some other group that systematically kills large numbers of non-combatants. For all its ills, in 2003 the Hussein regime in Iraq fulfilled neither of these criteria. That is not to say that the invasion of Iraq cannot be justified, but rather that it cannot be justified as an element of the war against terror.

The second key concern related to the doctrine of double-effect. Although the US and its allies conduct themselves with the highest regard for maintaining the separation between combatants and non-combatants, coalition strategists endanger enemy non-combatants in order to protect their combatants. The use of flawed intelligence and reliance on air power are designed to lower risks to coalition forces by removing them from harm's way. The result is that we must accept higher non-combatant casualties. According to the traditional formulation of double-effect, this is acceptable because the coalition is not deliberately targeting non-combatants and unintended deaths do not breach the discrimination principle. The problem, however, is that, understood in this way, double-effect becomes little more than sophistry. Even if non-combatant deaths are foreseen and their likelihood increased by the strategy adopted, military commanders remain blameless. Simply not intending non-combatant deaths is not enough, as Michael Walzer argued. Combatants must also take reasonable measures to minimise such deaths. That does not mean accepting intolerably high casualty rates amongst the military or jeopardising the military strategy, but it does mean that endangering non-combatants in order to conduct a 'casualty-free' war is unjust. In the case of Afghanistan, it is unlikely that less reliance on the Northern Alliance and a policy of verifying intelligence provided by Afghans before bombing a target would have dramatically increased

coalition casualties, but it is very likely that it would have reduced the number of non-combatant deaths.

As it is currently defined by George W. Bush, the 'war on terror' is inherently unjust because it is disproportionate. However, elements of the war were certainly justifiable as legitimate responses to the September 11 attacks. However, it is important that those charged with providing public scrutiny of government policy and rhetoric insist that political leaders provide a demonstrable link between the direct and systematic targeting of non-combatants and the use of force against the perpetrators of these attacks. It is unlikely that governments will cease using the 'war on terror' to justify a variety of military activities only tangentially linked to the unjust elements of terrorism. If governments are not forced to justify their actions there is a danger that the war on terror will be used to relax the restraints on war contained within the Just War tradition.

## Notes

- 1 I would like to thank Richard Devetak, Nick Wheeler, Paul Williams, Toni Erskine, the anonymous reviewers for *International Relations* and especially Sara Davies for their assistance and constructive comments.
- 2 George W. Bush, Address to a Joint Session of Congress and the American People, 20 September 2001.
- 3 The argument that international terrorism threatened not just individuals but also a way of life was echoed by Jean Bethke Elshtain in her moral defence of the war against terror. See Jean Bethke Elshtain, 'How to Fight a Just War', in Ken Booth and Tim Dunne (eds), *Worlds in Collision: Terror and the Future of Global Order* (Basingstoke: Palgrave Macmillan, 2002), pp.263–9.
- 4 Bush, Address to a Joint Session of Congress and the American People.
- 5 On the question of prudence see Robert L. Jervis, 'The Confrontation Between Iraq and the US: Implications for the Theory and Practice of Deterrence', *European Journal of International Relations*, 9(2), 2003, pp.315–37; John J. Mearsheimer and Stephen M. Walt, 'An Unnecessary War', *Foreign Policy*, 2003, pp.51–9. On legal questions see Adam Roberts, 'Law and the Use of Force After Iraq', *Survival*, 45(2), 2003, pp.31–56.
- 6 There have been notable exceptions: Jean Bethke Elshtain, Richard Falk, Michael Ignatieff and Michael Walzer have written widely on this question, and the Carnegie Endowment hosted a roundtable on this question.
- 7 Oliver O'Donovan, *The Just War Revisited* (Cambridge: Cambridge University Press, 2003), p.ix.
- 8 This does not exhaust the number of traditions. There are both more traditions and – importantly – many sub-traditions within each one. For reasons of space, however, it is not possible to go into this in more detail here. I deal with the different sub-traditions of the Just War tradition in Alex J. Bellamy, *Just Wars* (Cambridge: Polity, forthcoming).
- 9 See Steven Forde, 'Classical Realism', in Terry Nardin and David R. Mapel (eds), *Traditions of International Ethics* (Cambridge: Cambridge University Press, 1992), pp.62–84.
- 10 Brian Orend, *Michael Walzer on War and Justice* (Cardiff: University of Wales Press, 2000), p.71. The classification of pacifists as either deontological or consequentialist comes from Orend.
- 11 Robert L. Holmes, *On War and Morality* (Princeton: Princeton University Press, 1989), p.15.
- 12 This position is perhaps best expressed by Hans Morgenthau's fourth and fifth principles of political realism. The fourth holds that states are not moral agents and their actions are guided by interests rather than morality. The fifth insists that as there are no universal moral principles; the use of moral language to justify international action is merely a device for gaining advantage. Hans J. Morgenthau, *Politics Among Nations*, 6th edition (New York: McGraw-Hill, 1985), pp.11–12.
- 13 Carl von Clausewitz, *On War*, ed. and trans. Michael Howard and Peter Paret (London: Everyman's Library, 1993), p.77.
- 14 'Israel Soldiers Killed Near Lebanon', *BBC News*, 7 October 2003.

- 15 Of course, it is also important to remember that the Just War theorists also deny the legitimacy of a war fought solely to uphold the national interest. I am grateful to Sara Davies for bringing this point to my attention.
- 16 See note 14.
- 17 Sherman cited by Michael Walzer, *Just and Unjust Wars: A Philosophical Argument with Historical Illustrations* (New York: Basic Books, 2000; first edition 1977), p.32.
- 18 'Blair Calls for Unity', *BBC News*, 21 March 2003.
- 19 Human Rights Watch, *Hearts and Minds: Post-war Civilian Deaths in Baghdad Caused by US Forces*, report 15:9(E), October 2003; quotes are from p.6.
- 20 See Madeleine Morris (ed.), *The United States and the International Criminal Court* (Durham, NC: Duke University School of Law, 2001).
- 21 See Jeremy Rabkin, 'After Guantanamo: The War Over the Geneva Convention', *The National Interest*, 68, Summer 2002, pp.15–26. It is important to bear in mind that even so-called 'illegal combatants' are entitled to the basic protections afforded by Common Article 3 of the Geneva Conventions when they are rendered *hors de combat*.
- 22 Forde, 'Classical Realism', p.79.
- 23 Josiah Ober, 'Classical Greek Times', in Michael Howard, George J. Andreopoulos and Mark R. Shulman (eds), *The Laws of War: Constraints on Warfare in the Western World* (New Haven: Yale University Press, 1994), pp.12–26.
- 24 I owe these points to one of the anonymous reviewers of *International Relations*. I am very grateful for these insights.
- 25 Augustine, 'Letter to Count Boniface', in E.M. Atkins and R.J. Dodaro (eds), *Augustine: Political Writings* (Cambridge: Cambridge University Press, 2001), pp.214–18.
- 26 James Turner Johnson, *Morality and Contemporary Warfare* (New Haven: Yale University Press, 1999), p.158.
- 27 This tendency leads Philip Heymann to argue that the war against terror should not be labelled and prosecuted as a war, but rather as a judicial action. See Philip B. Heymann, *Terrorism, Freedom and Security: Winning Without War* (Cambridge, MA: MIT Press, 2003).
- 28 Jenny Teichman, *Pacifism and the Just War: A Study in Applied Philosophy* (Oxford: Basil Blackwell, 1986), p.110.
- 29 Paul Ramsey, *The Just War: Force and Political Responsibility* (Lanham, MD: Rowman and Littlefield, 1983), pp.398–9; Turner Johnson, *Morality and Contemporary Warfare*, pp.11–12.
- 30 Ken Booth, 'Ten Flaws of Just War', in Ken Booth (ed.), *The Kosovo Tragedy: The Human Rights Dimensions* (London: Frank Cass, 2001), pp.314–24, and Martin Shaw, *War and Genocide: Organized Killing in Modern Society* (Cambridge: Polity, 2003), p.103.
- 31 Martin Shaw, 'A Confession from the Amoral Left', <[www.theglobalsite.ac.uk/justpeace](http://www.theglobalsite.ac.uk/justpeace)>, p.2.
- 32 See Heymann, *Terrorism, Freedom and Security*.
- 33 Holmes, *On War and Morality*. Naturally, Holmes rejects the doctrine of double-effect as philosophically flawed.
- 34 See Roland H. Bainton, *Christian Attitudes Towards War and Peace: A Historical Survey and Critical Reflection* (Nashville: Abingdon Press, 1960).
- 35 One of the reviewers for *International Relations* raised an excellent point about whether this argument applies if an overtly pacifist government is democratically elected. This is an important exception, but it requires (1) that the government openly state its pacifist orientation prior to being elected and (2) that the government secure an overwhelming majority (initially, I believed only if the government secured 100 per cent but this may set the threshold too high). Governments are not responsible for the security of those that voted for them, they are responsible for the security of all citizens. In time of war, if citizens can only be defended by force and the citizenry has not given overwhelming support (over 90 per cent) to the government's pacifist position, the government is morally obliged to fulfil its obligation to secure those citizens who do not wish to endure a pacifist solution.
- 36 George Weigel, 'Moral Clarity in a Time of War', Ethics and Public Policy Centre, Washington DC, 2003. James Turner Johnson argues that instead of a 'presumption against war', the Just War tradition begins with a 'presumption against injustice'. Johnson, *Morality and Contemporary Warfare*, p.35.
- 37 Archbishop of Canterbury, Rowan Williams, 'Just War Revisited', Lecture to the Royal Institute of International Affairs, Tuesday 14 October 2003.
- 38 Williams, 'Just War Revisited'.

- 39 See the chapters collected in Paul Robinson (ed.), *The Just War in Comparative Perspective* (Aldershot: Ashgate, 2003).
- 40 Turner Johnson, *Morality and Contemporary Warfare*, p.7. However, it is also important to note that there are many differences between the laws of war and the Just War tradition. See, for instance, Josef L. Kunz, 'Bellum Justum and Bellum Legale', *American Journal of International Law*, 45(3), 1951, pp.528–34.
- 41 The idea of 'common morality' is put forward by Terry Nardin, 'Justice and Coercion', in Alex J. Bellamy (ed.), *International Society and its Critics* (Oxford: Oxford University Press, forthcoming).
- 42 Anon. Cited by Robert K. Fullinwider, 'Terrorism, Innocence and War', in William A. Galston (ed.), *War After September 11* (Lanham, MD: Rowman and Littlefield, 2003), pp.26–7.
- 43 James Turner Johnson, 'In Response to Terrorism', <www.leaderu.com/ftissues/ft9902/opinion/johnson>. Accessed 22 July 2003.
- 44 These 'causes' are drawn from St Augustine as cited by Thomas Aquinas, *Summa Theologiae* (Chicago: William Benton, 1952), p.52, Anthony Pagden and Jeremy Lawrence (eds), *Vitoria: Political Writings* (Cambridge: Cambridge University Press, 2001), Hugo Grotius, *The Rights of War and Peace*, book 2, trans. A.C. Campbell (Washington, DC: M. Walter Dunne, 1901), and Emmerich de Vattel, *The Law of Nations or the Principles of Natural Law* (Paris: Guillaumin, 1863).
- 45 This formulation paraphrases that of William O'Brien, *The Conduct of Just and Limited War* (New York: Praeger, 1981), p.27.
- 46 It is 'violence with the purpose of coercing that group into acceding to the political demands of the perpetrators', Sean Anderson and Stephen Sloan, *Historical Dictionary of Terrorism* (Metuchen, NJ: Scarecrow Press, 1995).
- 47 Labelled 'subnational groups or clandestine agents' in the US State Department's definition of terrorism, cited in Charles Tilly, 'Violence, Terror, and Politics as Usual', *Boston Review*, 27(3), 2002. Once again I am grateful to Richard Devetak for bringing this to my attention.
- 48 It is 'violence perpetrated against noncombatant targets' according to the US State Department quoted by Tilly, 'Violence, Terror, and Politics'.
- 49 It is 'the threat of violence and the use of fear to coerce, persuade and gain public attention', Anderson and Sloan, *Historical Dictionary*.
- 50 Frederick H. Russell, *The Just War in the Middle Ages* (Cambridge: Cambridge University Press, 1975), p.68.
- 51 John Stuart Mill, *Dissertations and Discussions*, 2nd edition (London: Longman, 1867), pp.153–78.
- 52 George J. Andreopoulos, 'The Age of National Liberation Movements', in Michael Howard, George J. Andreopoulos and Mark R. Shulman (eds), *The Laws of War: Constraints on Warfare in the Western World* (New Haven: Yale University Press, 1994), p.211.
- 53 C.A.J. Coady, 'Terrorism, Just War and Supreme Emergency', in Tony Coady and Michael O'Keefe (eds), *Terrorism and Justice: Moral Argument in a Threatened World* (Melbourne: Melbourne University Press, 2002), pp.8–21.
- 54 Turner Johnson, *Ideology, Reason and the Limitation of War* (New Haven: Yale University Press, 1999), pp.43–5. Also see Richard Shelly Hartigan, 'Saint Augustine on War and Killing: The Problem of the Innocent', *Journal of the History of Ideas*, 27(2), 1988, pp.195–204.
- 55 Francisco de Vitoria, cited by Turner Johnson, *Ideology, Reason and the Limitation of War*, p.196.
- 56 Elshstain, 'How to Fight a Just War', p.264.
- 57 The President formally justified the Iraq war to Congress as a continuation of the war against terror. Text of a letter from the President of the United States to the Speaker of the House of Representatives and Pro Tempore of the Senate, 21 March 2003.
- 58 Jean Bethke Elshstain, *Just War Against Terror: The Burdens of American Power in a Violent World* (New York: Basic Books, 2003), pp.69–70.
- 59 See letter from the President of the United States to the Speaker of the House of Representatives and Pro Tempore of the Senate.
- 60 Hugo Grotius cited by Terry Nardin, 'The Moral Basis of Humanitarian Intervention', paper presented at the Symposium on the Norms and Ethics of Humanitarian Intervention, Center for Global Peace and Conflict Studies, University of California, Irvine, 26 May, p.8.
- 61 See Michael Byers, 'Letting the Exception Prove the Rule', *Ethics and International Affairs*, 17(1), 2003, pp.9–16.

- 62 For this example and an excellent discussion of the ethics of strategic bombing, see Michael A. Carlino, 'The Moral Limits of Strategic Attack', *Parameters*, 32(1), 2002, pp.15–29.
- 63 Michael Walzer, *Just and Unjust Wars*, pp.155–6.
- 64 Elshtain, *Just War Against Terror*, p.67.
- 65 Individual cases are examined in considerable detail by Robert Cryer, who makes this point. Robert Cryer, 'The Fine Art of Friendship: *Jus in Bello* in Afghanistan', *Journal of Conflict and Security Law*, 7(1), 2002, pp.37–83.
- 66 This question is dealt with in more detail by Nicholas J. Wheeler, 'Dying for "Enduring Freedom": Accepting Responsibility for Civilian Casualties in the War against Terrorism', *International Relations*, 16(2), 2002, pp.205–25.
- 67 For a detailed discussion see Cryer, 'The Fine Art of Friendship', pp.64–5.
- 68 Luke Harding, 'No US Apology Over Wedding Bombing', *Guardian*, 3 July 2002.
- 69 Elshtain, *Just War Against Terror*, p.69.
- 70 Walzer, *Just and Unjust Wars*, p.156.
- 71 Robin Moore, *The Hunt for Bin Laden* (New York: Random House, 2003).
- 72 O'Donovan, *The Just War Revisited*, p.52.
- 73 See Frederick Russell, *The Just War in the Middle Ages* (Cambridge: Cambridge University Press, 1975).
- 74 Elshtain, *Just War Against Terror*, p.70.
- 75 See 'Was Depleted Uranium Used in Afghanistan?', *ABC News*, 1 July 2002, at <[http://www.abc.net.au/ra/asiapac/features/AsiaPacFeatures\\_595813.htm](http://www.abc.net.au/ra/asiapac/features/AsiaPacFeatures_595813.htm)>.
- 76 Cryer, 'The Fine Art of Friendship', p.58.