

# Terrorist Enemies and Just War

BY WILLIAM T. CAVANAUGH

**Terrorists don't fight fair. So how can just-war thinking possibly apply to these non-state actors who don't even pretend to play by the rules? The just war tradition, if we take it seriously, calls for a response to terrorism that is radically at odds with the approaches being pursued in the "war on terrorism."**

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**T**errorists don't fight fair. To Christians who are accustomed to approaching matters of organized violence through the just war tradition, terrorist tactics are a source of frustration. Within the tradition are criteria for deciding when and how violence can be used legitimately in a limited fashion for the correction of injustice, but for the last few centuries at least, the tradition primarily has been applied to conflicts between states. What happens when major acts of violence are perpetrated by non-state actors who don't even pretend to play by the rules?<sup>1</sup>

According to George Weigel and others, the just war theory needs to be developed to fit the "war against terrorism." The terrorist acts of September 11, 2001, were an act of war rather than a crime, Weigel asserts in "Reality of Terrorism Calls for a Fresh Look at Just-War Tradition," and therefore the just war tradition needs, as he puts it, to be "stretched" to accommodate this reality.<sup>2</sup> For the last three centuries, says Weigel, just war theory has "assumed that the state is the only significant 'unit' in world politics," but recent events have made us aware that non-state actors, like terrorist organizations, are "crucial units-of-count in the world. States are not all there is." Nevertheless, he claims, states remain the only legitimate authority for making war; we must resist the idea that the United Nations

or some other transnational authority is invested with the responsibility to act. "If someone is making war on us, as the terror network surely is, we do not require the permission of others to defend ourselves or to take the war to the enemy in order to defeat him."

The criterion of just cause—limited by some just-war thinkers to repelling acts of aggression already under way—needs tweaking as well, according to Weigel. Given that terrorists give no warning to their aggression, we cannot wait for them to act. "When facing terrorist organizations, pre-emptive military action is not only morally justifiable but morally imperative."

The criterion of last resort is also in for a facelift. Traditionally, the just war theory allows going to war only after all reasonable diplomatic means of avoiding the conflict had been tried and exhausted. According to Weigel, diplomacy is a waste of time with terrorist enemies. "Terrorists, by definition, do not play by the rules, diplomatic or otherwise. I can't see how it makes moral sense to argue that one must first attempt to negotiate with people who regard negotiation as weakness, who think of the 'other' as vermin to be exterminated, and for whom acts of mass murder are deemed religiously praiseworthy."

This "stretching" of the just war tradition raises difficult questions about how far the tradition can be stretched before it snaps. As a tradition, just-war thinking has developed to meet new situations, but the criteria are not indefinitely malleable. Traditionally, if a war cannot be fought justly, then it should not be fought, for to be in mortal sin is worse than defeat. It would, for example, be better to accept defeat than to attack innocent noncombatants directly. How can we complain that terrorists don't play by the rules, but then adjust the rules to fit what we feel we need to do? A skeptic might think that in this "stretching" we see the just war theory doing what it does best: justifying violence, not limiting it. A more charitable reading would see Weigel and others attempting to adjust the just war tradition, rather than abandon it, in order to bring its moral reasoning and limits to what is likely to be a difficult and bloody struggle.

I can sympathize with this effort, but thinking within the just war tradition in the contemporary context is significantly more demanding than stretching it to conform to American foreign policy as it is currently conceived. Indeed, I believe that if Christians really take the just war tradition seriously, it will call for a response to terrorism that is fundamentally at odds with the approaches being pursued by the political and military establishments. The just war tradition raises the following three challenges to our thinking about the "war on terrorism."

### **IS IT A WAR, OR A CRIME?**

Should we agree with the judgment of the Bush administration and of Congress that the United States has been engaged in a "war on terrorism"

since September 11, 2001? For many years U.S. policy treated international terrorism as a species of crime, writes Weigel, but September 11 made abundantly clear that this is war, not crime. He supposes, I think, that treating terrorism as a crime would somehow diminish the gravity of the acts, and show a lack of seriousness in the face of this monstrosity.

The just war tradition, to the contrary, suggests that calling an act “war” gives it a certain dignity that it would not otherwise have. The idea of “just war” –with its criterion of legitimate authority–was developed to distinguish the public use of violence from mere private vengeance and murder amongst quarreling citizens and from acts of brigandage. The intent of the just war tradition was to bring some moral order and limits to the use of violence by restricting its legitimate use to civil authorities properly constituted by God. To call an attack “war” is to recognize its potential legitimacy as an act of violence (for after all, there can be acts of just *war*, but there are no just *crimes*). It is not at all clear, therefore, that we should dignify acts of terrorism with the label “war.” To the contrary, the word “crime” seems far more fitting.

This basic insight of the just war tradition is enshrined in many twentieth-century efforts to respond to atrocities. After World War II, for example, some leading Nazis were not treated as mere combatants, but were charged at Nuremberg with committing “crimes against humanity.” To call Auschwitz an act of war against the Jews would be to give it a certain proximity to legitimacy that it does not deserve. Indeed, many Nazis tried to defend themselves at Nuremberg by arguing that their atrocities were a regrettable byproduct of war. The Nuremberg tribunal was operating within the broad just war tradition when it called such atrocities crimes, not war.

Terrorism is unlike war in a number of ways. Terrorism is carried out without explicit support or direction from any sovereign political unit. It is the work of small groups of individuals, not armies, and terrorists do not tend to wear uniforms or otherwise identify themselves as

combatants. Terrorists tend to seek disruption rather than the clear defeat of an opponent. Both in practice and in theory, terrorists ignore traditional distinctions between combatants and noncombatants in choosing their targets. For these reasons and others, the United Nations Security Council has repeatedly called terrorism a crime, though it should be acknowledged

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that terrorism tends to resemble “hate crimes” more than crimes done for personal gain, such as robbery.<sup>3</sup>

Why should it matter which term is used for terrorism? To say that terrorists are at war with us is to indicate that we are at war with them. To speak of crime, on the other hand, is to indicate that policing is required, even if military forces are involved. And war and policing, though they are not completely discontinuous, have very different dynamics. Policing seeks to secure the common good within a community, and is therefore limited by the law and customs of that community. War pits one community against another, and is therefore less restrained by the rule of law. War is expeditionary, taking the capacity to kill and destroy into someone else’s territory. In other words, war is us-versus-them, whereas policing is about promoting the common good amongst us. Because of this, policing has an inherent mandate to minimize violence; in policing, lethal force is the last resort, whereas in war it is the first. In war, soldiers are less restrained by law, for they serve simultaneously as judges and executioners for those they kill.<sup>4</sup>

For Weigel, the Bush administration, and others, to call terrorism a “crime” might limit the goals of the response to the apprehension and punishment of those directly responsible. This would require cooperation with foreign governments and transnational bodies such as the United Nations, listening to their vision of the common good for the international community. The U.S. government’s ambition in the Middle East, however, is to topple governments and remake the whole of Middle Eastern society in our image in order to destroy the root causes of terrorism. Because the just war tradition is about limiting violence and avoiding war, however, there are good reasons for just war advocates to resist the crusading impulse at work here. To treat terrorism as crime and not war is to adopt the basic just-war conviction that violence should be used for the limited goal of restoring justice and not, as some would have it, to convert others by force, to make them think and act like us. This strategy is likely to produce more opposition and more terrorism, not root out its causes.

#### **WHO HAS LEGITIMATE AUTHORITY?**

Part of the reason Weigel insists that this is a war is to resist those who would “think that the U.N. or some other transnational agency is the ‘legitimate authority’ for sanctioning the use of armed force.” Weigel assumes that the nation-state is the sole legitimate authority for waging war; it can wage war preemptively, if necessary, and without the approval of any other international body, either the church or the United Nations. Christian just war advocates, however, have good reason to question the sole legitimacy of the nation-state to respond to terrorism. The just war tradition developed long before there was any such thing as a nation-state. What existed in the medieval period was a complex network of overlapping

loyalties to various princes and nobles. Territorial sovereignty was not yet sorted out neatly, and all princes were subject to a higher authority, the pope, at least in theory. There was no sense that the civil authorities somehow operated “outside” of the Roman Catholic Church. As one commentator put it, the civil authorities in the medieval period were “the police department of the Church.”<sup>5</sup> When one prince used violence against another, it was within a larger order, and appeal for arbitration could be made to the pope. The analogy to the police function is relevant here.<sup>6</sup>

It is crucial to note, therefore, that what became known as the just war tradition was developed as a form of moral reasoning *within* the Church, most often in the context of the confessional. Whether or not a war was just had an effect on the length of penance that was imposed on those who had killed as an act of war (with penances of up to one year imposed on soldiers who killed, even in a just war). Candidates for priesthood were excluded from ordination for participating in bloodshed. Furthermore, bishops and popes had a direct hand in limiting the violence of war. Ecclesiastical authorities promulgated the Peace of God and the Truce of God to declare certain places and time periods off limits to warmaking. Bishops often reinforced these initiatives by denying the Eucharist to offenders.<sup>7</sup>

It is only in the early modern period that the just war tradition becomes primarily a tool for rulers in independence from the church. As the leading historian of the just war in the medieval period puts it, “What with Augustine had started out

as a problem of morality and scriptural exegesis ended up as a tool of statecraft in the hands of secular monarchs.”<sup>8</sup> Weigel simply assumes that legitimate authority has passed to the nation-state in the modern era, and he refuses to allow that authority to be shared by the United Nations or other transnational bodies.

Nation-states may currently have the military power to wage war, unlike other bodies, but we should not conflate this power with the moral authority to decide whether a particular use of force is just.

As we have seen, the just war tradition was not developed as a tool of statecraft, but as an intra-church aid to moral reasoning for Christians grappling with serious matters of violence and coercion. Discernment in these grave matters is not a matter of just anyone running down a checklist

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of criteria. "Justice" is the name of a virtue. Traditionally, it was assumed that those who would judge rightly in these matters would be followers of Jesus Christ, formed in the virtues of a disciple, and given authority by the Holy Spirit within the community of disciples. There is no reason to suppose that the leaders of a secular nation-state are so formed, or that narrow national self-interest will not trump the Gospel in foreign policy decisions. Some wish to defer to the President's judgment on the basis of his superior access to information; but in the first place, formation in the virtues is not primarily a matter of information, and in the second place, information is easily manipulated to the service of narrowly defined interests. The secular nation-state is not set up to be a community of virtue; rather, it is a community of interests. In theory, at least, a liberal nation-state is established to maximize the freedom of individual actors to pursue their own interests. Justice is primarily a matter of giving each his or her due. Decisions of statecraft about the justice of a particular use of force will inevitably be based on interest and power, and not primarily on the kind of justice proper to the community of Christian disciples.

For this reason, the just war tradition, if taken seriously, would mandate at least that the church not abdicate to the nation-state its ability to decide when a particular use of force is just. It is troubling that, despite vocal opposition by leaders of nearly every major Christian denomination to the attack on Iraq in March 2003, most Christians in America were content to leave the matter to the state to decide. The just war tradition presupposes that the church be ready and willing to step out of line with national policy when Christian discipleship demands it.

#### **MAY WE DEMONIZE ENEMIES?**

It is easy to demonize terrorists because of the stark contrast between the evil of the perpetrators of terror and the innocence of their victims, who usually are noncombatants. To guard against such demonization of the enemy, the just war tradition distinguishes between appropriate and inappropriate targets, combatants and noncombatants. For example, the behavior of German troops in World War II, even though in service to an evil cause, is nevertheless deemed appropriate if their object was to kill only Allied combatants. It is not that the Allied soldiers deserved to die, but their status as combatants means that they are not simply classified as "innocents." Just war produces a certain leveling: the enemy combatant is not simply evil, and the soldier on "our" side is not simply innocent. Terrorism, however, highlights a sharp contrast between the evil and the innocent. The images of September 11, 2001, are so powerful precisely because the victims were unsuspecting civilians going about their everyday lives: making copies, talking on the phone, cleaning floors, chatting with clients. The wholesale slaughter of these people marks the clearest contrast between evil and innocence.

Because the terrorists do not play by the rules, we might be tempted to abandon the leveling impulse of the just war tradition; the terrorists certainly have. The terrorists have committed a grave evil. It is not necessarily the case, however, that the innocence of the victims transfers over to those who would respond in their defense. We should resist assuming that we who identify with the victims are also innocent, and that an unbridgeable moral gulf separates us from the terrorists.

Certainly we are justified in defending ourselves against terrorism, yet it is salutary to remember that we have not always acted so well by the rules of just war. The U.S. government defines terrorism as “premeditated, politically motivated violence perpetrated against noncombatant targets by subnational groups or clandestine agents, usually intended to influence an audience.”<sup>9</sup> Under this definition, the United States has supported terrorism on a large scale. In Central America, for example, the United States—through its policies of “counter-insurgency,” “low-intensity warfare,” and the attacking of “soft targets”—financed, armed, and provided cover for groups that terrorized noncombatants, mostly peasants, in El Salvador, Nicaragua, and Guatemala.<sup>10</sup> In World War II, the United States directly targeted noncombatants in Hiroshima, Nagasaki, Dresden, Tokyo, and other cities.

The criterion of last resort must not be reinterpreted so that the need to dialogue with our enemies is dismissed. The criterion of last resort is based on the dual presumption that our enemies—even in the grip of evil—remain children of God, and that our own actions and intentions are never above examination.

In the wake of the September 11 attacks, the question “Why do they hate us?” has often been given a self-serving answer—for example, “They hate us for our freedoms”

—or the question has been angrily dismissed as giving reason to evil. I believe the criterion of just cause requires us to dwell with this question more searchingly. Middle Eastern Muslims have a long list of grievances against the United States and the West, from the installation of the Shah of Iran and his brutal regime in 1953, to the treatment of Palestinians by U.S.-supported Israel, to the presence of the U.S. military in Saudi Arabia and Iraq. Nothing can justify terrorist attacks. If the purpose of the response to ter-

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rorism is to correct injustice, however, then we must not simply ignore the claims to justice that our enemies make on us. We must not be blinded by the evil of terrorism into assuming that the injustice of terrorist tactics necessarily negates the possible justice of their cause. The history of American dealings with the Muslim world is long and complex. We must actively explore that history in dialogue with Muslim friends and enemies, and not

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allow terrorism to impose a fog of amnesia on our dealings with others.

Where foreign policy is driven by narrowly-defined national and corporate interest, Christians must realize our vocation to confess the Christian story truthfully and speak truth to power.

The just war tradition developed in a penitential context. Christian just-war advocates would do well to approach terrorism in the same spirit. At its best, the just war tradition does not simply justify violence but questions it, both “ours” and “theirs.” In doing so, the hope is to build bridges—not just burn them—between us and our enemies, so that the common good of all of God’s creation is actively pursued. If this does not sound like statecraft, it is because it is not. The church must take a prophetic role in resisting the violence of both state and non-state actors, and witnessing to the peace of Jesus Christ in a violent world.

## NOTES

1 According to most thinkers in the just war tradition, here are the criteria: war should only be waged (1) for a just cause, (2) after being declared by a legitimate authority, (3) as the last resort, (4) with good intentions, (5) with promise of a high probability for success, (6) by targeting only combatants, and (7) by ensuring the damage done will be proportional to the offense to which the war is a response.

2 Theologian George Weigel is a Senior Fellow of the Ethics and Public Policy Center in Washington, D.C. Quotations are from his “Reality of Terrorism Calls for a Fresh Look at Just-War Tradition,” *The Catholic Difference* (September 20, 2001), available on the Center’s website at [www.eppc.org/news/newsID.585/news\\_detail.asp](http://www.eppc.org/news/newsID.585/news_detail.asp). For a similar argument, see Michael Novak, “‘Asymmetrical Warfare’ & Just War,” *National Review Online*, February 10, 2003, at [www.nationalreview.com/novak/novak021003.asp](http://www.nationalreview.com/novak/novak021003.asp).

3 See Edward Leroy Long Jr., *Facing Terrorism: Responding as Christians* (Louisville, KY: Westminster John Knox Press, 2004), 13-15.

4 See Gerald Schlabach, “Just Policing: How War Could Cease to Be a Church-Dividing Issue,” soon to be published, but available now at <http://personal.stthomas.edu/gwschlabach/docs/policing.htm>.

5 John Neville Figgis, *From Gerson to Grotius: 1414-1625* (New York: Harper Torchbook, 1960), 5.

6 John Howard Yoder, *Christian Attitudes to War, Peace, and Revolution: A Companion to Bainton* (Elkhart, IN: Peace Resource Center, 1983), 60.

7 Frederick H. Russell, *The Just War in the Middle Ages* (Cambridge: Cambridge University Press, 1975), 31-36; and John Howard Yoder, *When War is Unjust*, revised edition (Maryknoll, NY: Orbis Books, 1996), 10-12.

8 Russell, 302

9 22 U. S. C. 2656f (d), quoted in Long, 2.

10 For declassified government documents on the U.S. role in these atrocities, see George Washington University's National Security Archive at [www.gwu.edu/~nsarchiv/](http://www.gwu.edu/~nsarchiv/).

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