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GLOBALIZATION, ETHICS, AND THE WAR ON TERRORISM

MARYANN CUSIMANO LOVE*

“September 11th made ever more clear that globalization is a reality requiring greater moral scrutiny. . . . Maintaining a strong military is only one component of our national security. A much broader, long term understanding of security is needed.”

UNITED STATES CONFERENCE OF CATHOLIC BISHOPS,
A PASTORAL MESSAGE: LIVING WITH FAITH AND
HOPE AFTER SEPTEMBER 11TH, Nov. 14, 2001.

“What is needed is a network of structures, institutions, principles and elements of law to help manage in the best possible way the world’s common good, which cannot be protected only by individual governments.”

Archbishop Diarmuid Martin,
Secretary of the Pontifical Council
for Justice and Peace, May 2, 2000.

THE DEBATE: ETHICS AND THE WAR ON TERRORISM

Since September 11th, there has been spirited debate over the ethics of the war on terrorism. A major part of that debate concerns whether Just War Tradition (JWT) applies to the war on terrorism. There are four variants of this argument: the concern that war against nonstate actors is not covered by JWT; the pacifist critique; the argument that JWT applies, but faces many hurdles as the war on terrorism expands beyond Afghanistan; and the position taken here, that JWT provides necessary but insufficient insights into the ethics of the war on terrorism. JWT describes the ethical responsibilities of public authorities for protecting and defending the common good. But globalization brings the rise of private power. Critical global trade, transportation, and communication infrastructure are privately owned and

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operated. Public sector authorities have neither the expertise, resources, control, nor the access to protect these critical infrastructure. Private sector actors have the expertise and access but do not want to use their resources and do not fully accept their responsibilities for public safety and security functions, for protecting and defending the common good. Private sector actors must accept increasing responsibility for protecting and defending the common good, but JWT delineates only the ethical responsibilities of government actors. Therefore, attempts to understand the ethics of this "new kind of war" must go beyond JWT.

While terrorism (the use of violence by nonstate actors against noncombatants for the purpose of causing fear in order to achieve political goals) has been around for centuries, the modern period of globalization changes terrorism. Globalization is the fast, interdependent, global infrastructure of open economies, open societies, and open technologies. Globalization facilitates the work of terrorists like al Qaeda. Open economies, societies, and technologies gave al Qaeda the opportunity to take their complaints to a global stage, to act cheaply at a distance, to perpetrate greater casualties using interdependent and easily accessible private sector technologies, and to elicit greater fear by playing in front of cameras and satellites that broadcast their actions instantly and globally.¹ Does globalization change our understanding of the ethics of the war on terrorism?

According to the first view, Just War Theory describes the ethical responsibilities of sovereign states, but the war on terrorism entails fighting nonstate actors.² On September 11th, nonstate actors used non-military means to attack primarily noncombatant and non-government targets. The al Qaeda terrorist network, the presumed perpetrators, operate across sovereign borders with cells in an estimated fifty states. The suicide bombers, nineteen hijackers representing no state, were Saudis and Egyptians living in the United States, trained in Afghanistan, organized and financed in Germany, England, and Spain, with information and money sent internationally to them from companies, non-governmental organizations (NGOs), and individuals. Al Qaeda's financial network drew from the diamond trade in Sierra Leone and the Afghan heroin trade, linking the terror-

1. MARYANN CUSIMANO LOVE, *BEYOND SOVEREIGNTY: ISSUES FOR A GLOBAL AGENDA* (Wadsworth 2d ed., forthcoming Aug. 2002).

2. Panel Discussion, *Just War Tradition and the New War on Terrorism*, at Pew Forum on Religion & Public Life, at <http://pewforum.org/publications/reports/PFJustWar.pdf> [hereinafter Panel Discussion], at 9 (quoting David Saperstein).

ist network with global crime and drug trafficking networks.³ State leaders denounced the violence. NATO and the OAS declared the attacks an act of war triggering these mutual defense pacts, because these treaties consider an attack against one member state as an attack against all signatories.⁴ But the OAS and NATO charters envision attacks and responses by sovereign states. The September 11th attacks do not fit that mold, and so many question JWT's applicability to this "new kind of war."

This argument is easily countered. While earlier versions of the JWT began with the Greeks and Romans, the Christian Augustinian tradition of JWT was developed in the fourth century,⁵ long before the modern state system developed with the Treaty of Westphalia in 1648. JWT was not originally oriented to the modern sovereign state system. Further, JWT has often been applied to nonstate actors, in the form of guerrilla and secessionist movements. The United States government has long experience fighting nonstate actors who targeted noncombatants.

Squabbles with the Barbary pirates, who were supported by the pasha of Tripoli (present day Libya—even in the 1790s the United States had poor relations with Libya due to what was viewed as a form of state-sponsored terrorism), led to the formation of the U.S. Navy and the beginnings of the president's ability to commit troops abroad without a formal declaration of war by Congress.⁶

From the United States government's efforts to combat the Barbary pirates to the wars in Vietnam, Bosnia, and Somalia, using force against nonstate actors is nothing new, and clearly falls in the purview of JWT.⁷ JWT seeks to clarify the ethical responsibilities of legitimate public authorities to engage in organized violence, or war. These ethical obligations of states are not dissolved when the enemy is a nonstate actor.

The second argument that JWT does not apply to the war on terrorism is offered by advocates of non-violence. In their view,

3. Douglas Farah, *Al Qaeda Cash Tied to Diamond Trade: Sale of Gems From Sierra Leone Rebels Raised Millions, Sources Say*, WASH. POST, Nov. 2, 2001, at A1.

4. NATO, *NATO Update: Invocation of Article 5 Confirmed*, at <http://www.nato.int/docu/update/2001/1001/e1002a.htm>. See also OAS, *Support for the Measures of Individual and Collective Self-Defense Established in Resolution RC 24/ Res. 1/01*, at http://www.oas.org/OASpage/crisis/follow_e.htm.

5. See generally SAINT AUGUSTINE, *THE CITY OF GOD* (Thomas Merton trans., 2000).

6. MARYANN K. CUSIMANO, *BEYOND SOVEREIGNTY: ISSUES FOR A GLOBAL AGENDA* 15 (2000).

7. See generally JAMES TURNER JOHNSON, *MORALITY AND CONTEMPORARY WARFARE* (1999).

JWT is invalid and therefore should not be applied to the current war on terrorism. The use of violence only breeds more violence, and responds to the symptoms rather than addressing the underlying causes of conflict. For example, Bishop Thomas Gumbleton of Detroit, Michigan, an avowed pacifist, argues, "We need to just let go of Just War Theory. It should be put back in the drawer and the drawer should be locked and we should never look at it again."⁸

Christian advocates of non-violence argue that war, no matter what the circumstances, is not Christ-like. Stanley Hauerwas notes that Christ's disciples did not rush "back to Galilee and form the Galilean Liberation Front to save Jesus from being killed," even though Christ was clearly an innocent and his crucifixion was unjust. Hauerwas asks since "Christians don't develop theories of 'just adultery.'" How is it that we develop theories of just war, and what does that do to our understanding of what we mean when we wish one another the peace of Christ?⁹

Counter arguments to non-violence are well known. Hauerwas's critiques, while pithy, presuppose that violence can never be just or justifiable, and confuse the levels of analysis between individual behavior and the different moral obligations of governing authorities. As the Catholic Catechism explains the argument:

All citizens and all governments are obliged to work for the avoidance of war. However, "as long as the danger of war persists and there is no international authority with the necessary competence and power, governments cannot be denied the right of lawful self-defense, once all peace efforts have failed."¹⁰

Further,

The legitimate defense of persons and societies is not an exception to the prohibition against the murder of the innocent that constitutes intentional killing Love toward oneself remains a fundamental principle of morality. Therefore it is legitimate to insist on respect for one's own right to life. Someone who defends his life is not guilty of murder even if he is forced to deal his aggressor a lethal

8. Kevin Eckstrom, *Catholic Bishops Support War on Terrorism, Urge Restraint*, RELIGIOUS NEWS SERVICE, Nov. 15, 2001.

9. Panel Discussion, *supra* note 2, at 6 (quoting Stanley Hauerwas).

10. See CATHOLIC CHURCH, CATECHISM OF THE CATHOLIC CHURCH ¶ 2308 (2d ed., 1997) available at <http://www.usccb.org/catechism/text/pt3sect2chpt2art5.htm> [hereinafter CATECHISM] (quoting GAUDIUM ET SPES 79 § 4) (discussing the Fifth Commandment and the safeguarding of peace).

blow Legitimate defense can be not only a right but a grave duty for one who is responsible for the lives of others. The defense of the common good requires that an unjust aggressor be rendered unable to cause harm. For this reason, those who legitimately hold authority also have the right to use arms to repel aggressors against the civil community entrusted to their responsibility.¹¹

JWT is cited as the means to discern the conditions for the just use of force.¹² While non-violence is a valid ethical response for individuals, public authorities charged with protection of the civilian population have both the right and the obligation to defend the common good with force in dire situations when all else fails.¹³

DOES JUST WAR THEORY APPLY? YES, BUT . . .

A third approach argues that the United States's use of force against the Taliban and al Qaeda in Afghanistan meets the criteria of Just War Theory, and that "[o]ur nation, in collaboration with other nations and organizations, has a moral right and a grave obligation to defend the common good against mass terrorism."¹⁴ The al Qaeda network killed innocent noncombatants on September 11th, and threatens to continue to kill, making no distinctions between combatants and noncombatants. The U.S. Catholic Bishops—and just war thinkers such as Jean Bethke Elshtain and James Turner Johnson—argue that the events of September 11th required a military response in accordance with JWT.¹⁵ Governments have moral responsibilities to act in self-

11. *Id.* at ¶¶ 2263–65 (discussing the Fifth Commandment and legitimate defense).

12. *See id.* at ¶ 2309 (discussing the Fifth Commandment and safeguarding of peace).

13. *See generally* UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *HARVEST OF JUSTICE IS SOWN IN PEACE* (1993), available at <http://www.usccb.org/sdwp/harvest.htm> [hereinafter *HARVEST*] (discussing the Christian's call for peace and the role of government in that process); UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *THE CHALLENGE OF PEACE: GOD'S PROMISE AND OUR RESPONSE* (1993), available at <http://www.osjspm.org/cst/cp.htm> (discussing the proper response to violence); UNITED STATES CONFERENCE OF CATHOLIC BISHOPS, *A PASTORAL MESSAGE: LIVING WITH FAITH AND HOPE AFTER SEPTEMBER 11*, 3–4 (2001), available at <http://www.usccb.org/sdwp/sept11.htm> [hereinafter *A PASTORAL MESSAGE*]; POPE JOHN XXIII, *PACEM IN TERRIS* (1963), reprinted in *THE GOSPEL OF PEACE AND JUSTICE* 211–18 (Joseph Gremillion ed., 1976) (discussing the relationship between individuals and public authorities).

14. *A PASTORAL MESSAGE*, *supra* note 13, at 3.

15. *See* Panel Discussion, *supra* note 2 (reporting the comments of panelists Jean Bethke Elshtain and James Turner Johnson). *See also* James V. Schall, *On the Justice and Prudence of this War*, 51 CATH. U.L. REV. 1, 1–13 (2001); J.

defense, in protection of innocents, in protection of the common good, and in protection of *tranquilitas ordinis*, the safety and civic peace which allows citizens to go about their daily lives. Years of diplomatic and law enforcement efforts to arrest bin Laden and his network and freeze their financial assets have not worked. The use of force in Afghanistan was limited and targeted against combatants, with efforts taken to reduce the suffering and harm caused to Afghan civilians by increasing refugee and relief aid to the country. Force was undertaken by the United States government after discussion and agreement by the President and Congress; the response additionally was sanctioned by our treaty partners, NATO and the OAS, and by the UN. Thus, most just war theorists argue that the U.S. military response in Afghanistan to date met key criteria of JWT both *ad bellum* and *in bello*: just cause; right intention; legitimate authority; comparative justice; last resort; probability of success; proportionality; and protection of noncombatants.

Still, the argument that JWT applies to the war on terrorism, and that actions so far in Afghanistan meet the criteria of JWT, leaves many tough questions. Even if the war in Afghanistan has been entered into and conducted in a manner consistent with JWT, that does not mean that future fronts in the war on terrorism will be conducted in a manner consistent with JWT.

Congress, NATO, the UN, and the OAS all endorsed U.S. action against the Taliban, al Qaeda, and Osama bin Laden in Afghanistan. How transferable are these statements? Would the legitimate authority and right intentions criteria be met if the war was extended to Somalia, Yemen, Sudan, Iraq?¹⁶

Do al Qaeda's or Iraq's actions to acquire—and in the case of bin Laden, stated intention to use—weapons of mass destruction (WMD) change the equation at all? Can the right of self-defense be extended to anticipatory self-defense when terrorists threaten to use weapons of mass destruction against massive civilian targets, and evidence exists that they have the means to carry out the threat? Traditional Just War Theory does not allow for an expansive definition of self-defense, but globalization challenges that. While terrorism is old, globalization means terrorists can now act instantly at a distance, amassing greater casualties in front of a wider audience. The deaths and casualties are not the

Bryan Hehir, S.J., *What Can Be Done? What Should be Done?* AMERICA, October 8, 2001, at <http://www.americapress.org/articles/hehir-terror.htm>. Zenit News Agency, *Renowned Moral Theologian Weighs in on Anti-Terrorism* Sept. 29, 2001, at <http://www.zenit.org>.

16. Antonio F. Perez, *The Modern Relevance of Legitimate Authority in the Just War Tradition*, 51 CATH. U.L. REV. 15–26 (2001).

only losses resulting from massive terrorist attacks. The resultant fear also causes physical damage and death (in the sarin gas attacks on the Japanese subway system, most of the casualties were from fear, from panic, and heart attacks), as well as massive economic damage. The September 11th attacks caused billions of dollars worth of damage to the U.S. economy, creating ethical implications as budgets available to the poor and non-military programs are now constricted. Some in the Bush Administration argue if weapons of mass destruction are in the hands of a "shadowy network" of terrorists who can use them nearly instantly and from a distance, decision-makers have a moral responsibility to undertake preventive military actions. Protecting innocent civilians from grave danger and providing for the common good demand anticipatory self-defense, and JWT should adapt to encompass these realities of globalization.

Some just war theorists, like Michael Walzer, agree that preemptive strikes are sometimes permissible if an opponent demonstrates "a manifest intent to injure, a degree of active preparation that makes that intent a positive danger, and a general situation in which waiting, or doing anything other than fighting, greatly magnifies the risk."¹⁷ Others argue that JWT precludes such an expansive approach to self-defense precisely because it is a slippery slope that could be used to justify using military force precipitously, rather than as a last resort. JWT begins with a presumption against the use of force, that is only overcome in rare, extreme circumstances. Prudence, humility, "a spirit of moderation," and "a culture of restraint," are required in moral deliberation over the use of force, which may not square with preemptive strikes.¹⁸ Do leaders have to wait until struck to be able to act in self-defense, or does protection of the innocent give leaders an obligation to act preemptively? How "clear and present" must the danger be when the scale, indiscriminate nature, and lethality of a WMD attack would be severe? These are the difficult questions JWT must grapple with as the war on terrorism enters its next stages.

However, there is a fourth argument, a way in which Just War Theory does not suffice to explain the ethical obligations for protection of the common good in the war on terrorism. JWT is a necessary but incomplete portrayal of the moral obligations of key actors to protect and defend the common good in this new kind of war. JWT discusses the ethical responsibilities of public

17. MICHAEL WALZER, *JUST AND UNJUST WARS: A MORAL ARGUMENT WITH HISTORICAL ILLUSTRATIONS* 81 (3d ed. 2000).

18. See HARVEST, *supra* note 13.

sector governing authorities, but globalization moves many of the functions of defending innocents and safeguarding the peace to the private sector.

A key contribution of JWT is its focus on the actions of the legitimate governing authorities. It was part of the move, continued later in the Treaty of Westphalia of 1648, to de-legitimize private armies and bands of armed criminals and to centralize the use of force in the hands of the sovereign. By legitimizing a monopoly on the use of organized violence for public authorities, while requiring that strict limitations be placed on the circumstances under which war could be used and how it could be waged, JWT makes considerable progress toward a vision of peace to which pacifists also aspire. JWT works to raise the bar of political practice, restricting the use of war to only legitimate authorities, restricting the reasons for going to war to only a few just causes with just intent, and restricting the means by which war may be waged. The goal of these restrictions is that war will become less likely, less lethal to noncombatants once waged, and overall, more justice will be served than if war were not used and self-defense and protection of the innocent were not undertaken. Some of the weaknesses of JWT are how to discern and weigh the varying criteria, and how to avoid a slippery moral slope which rationalizes or legitimates war. The strengths of JWT are that it provides a practical set of criteria for real life decision-makers to weigh their actions to build the kingdom here and now.

JWT does not sit on the sidelines of difficult moral choices. We will always have imperfect justice in this life, rather than the perfect justice which awaits in the Kingdom. But this imperfection of our actions does not give us the right to do nothing while evil works among us, while innocents are killed and we have the ability to do something to stop it. JWT depends on a key leap of faith, acknowledging our own limitations with a sense of humility and prudence, while still attempting to live up to our responsibilities to protect and defend life (even if it means occasionally using arms). Sometimes God sends angels to protect the innocent from grave evil; mostly God sends us. JWT parallels the Jesuit ideal of St. Ignatius Loyola of finding God in all things. JWT involves a leap of Christian imagination and faith that God could work through us even in as unlikely an undertaking as war. It requires us to check desires for vengeance, glory, or greed and replace these with desires to serve the common good and protect those who cannot protect themselves.

However, the downside of JWT's focus on the moral responsibilities of public authorities to protect and defend the common

good is the implication that private actors have no responsibilities for public security functions. If private sector actors build and maintain the critical infrastructure of global trade, transportation, and communication, what are their moral responsibilities to safeguard the public from terrorist attacks? As Pope John XXIII noted in 1963, in an interdependent world, states are no longer up to the task of promoting and protecting the universal common good, especially in the realms of peace and security.¹⁹

GOING BEYOND JUST WAR THEORY: THE RISE OF PRIVATE POWER

How can JWT be supplemented in a world of globalization, in which private (not public) authority is on the rise? This is a new kind of war, not just because nonstate actors are the belligerents (which is not new), but because private authorities have important practical responsibilities toward safeguarding the innocent. JWT is right to focus on the moral responsibilities of governing authorities, but this approach is incomplete. What are the moral responsibilities of businesses and private actors in fighting the war on terrorism? JWT is reactive; it tells decision-makers what to do last, after all else has failed. JWT provides moral guidance for what to do in worst-case scenarios, when innocents have been slaughtered or are endangered, when a dangerous and determined foe cannot be negotiated with or deterred, when legitimate governments have their backs to the wall. JWT does not offer much specific guidance on how to avoid or prevent worst-case scenarios. (Neither does pacifism for that matter.) This is not so much a critique of JWT, as we should not expect a tradition with a narrow focus to cover all aspects of public morality, but it does point to the limited writ of a useful and long-lived approach in understanding the ethics of the current war on terrorism. JWT applies to the war on terrorism, but while necessary, it is not sufficient in consideration of the ethics of this war because private actors have important ethical responsibilities for the public good in an era of globalization.

This was made clear to me over the past three years, as I served on the Council on Foreign Relations project on Homeland Security. We briefed business leaders, policy makers, government officials in the national security bureaucracy, congressional representatives, civic and academic leaders in Washington, D.C., New York, Miami, Houston, Los Angeles, Ottawa, Canada, Port of Spain, Trinidad, and Kingston, Jamaica. We warned of the vulnerabilities of our trade and transportation infrastructure to exploitation by terrorists and criminals. My

19. See POPE JOHN XXIII, *supra* note 13, ¶¶ 131–35.

"stump speech" line was "terrorists and tourists alike use the same global infrastructure." We told leaders the question was not whether an attack would occur, but when. I teach graduate courses in International Security at the Pentagon. Imagine my dismay when, on September 11th, our warnings proved true and my class found itself studying terrorism while under terrorist attack.

Our briefings were met with either sympathy or skepticism. The sympathetic said that they agreed but were powerless to change the allocation of resources to better respond. The only new security initiative being funded by government was missile defense. The Clinton Administration had increased counterterrorism measures considerably, but scandals dissipated any political capital to do more, and the Bush Administration favored unilateralism, not multilateral approaches to security. The sympathetic in business argued they could not convince their shareholders or CEOs to reallocate resources to public security functions. The skeptics argued that if terrorism was such a clear and present danger, then why did only nineteen Americans die in the year 2000 from terrorist attacks? Business leaders, in particular, argued that the problems were interesting, but not really their concern. In their view, counterterrorism was the government's job, specifically the job of the military and law enforcement. I countered that trade and transportation infrastructure are largely privately owned and operated. Government cannot protect critical infrastructure without information, assistance, and cooperation from the private sector. Interestingly, government leaders did not question whether they had a responsibility to protect and defend the common good, only whether it was truly endangered. But business leaders questioned whether they had responsibilities to protect the common good.

Global infrastructures were built for speed and profit, not security. People and packages now move faster, farther, easier, and for a lower price than ever before, but at the cost of preventive, multilateral security measures. While attention has been given to airline security since September 11th, security has not been adequately addressed in the rest of our transportation and trade infrastructure, particularly commercial shipping. For example, while airline passengers have their tweezers and nail clippers seized at the gates, commercial shipping cargo is loaded on these same aircraft with virtually no security precautions. Whether by land, sea, or air, over twenty-one million cargo containers enter the United States every year. Less than 2% of those containers are inspected in "needle in the haystack" random checks by border, customs, or coast guard agents. Manifests are

still filed in paper, and shippers have up to thirty days *after* a container has entered the United States to notify the government of its content or origins. This is how most illegal drugs enter the United States, and cargo containers are increasingly used in human smuggling. If terrorists were to ship and explode a chemical, biological, or nuclear device via container cargo, the U.S. government would have no prior information to prevent it and possibly little post-event data to track it. The current system favors shippers and businesses, who, with few reporting or inspection requirements, can cheaply speed inventories for just-in-time delivery and avoid warehousing and storage costs. The shippers say they have few incentives to change the system and engage in greater public-private cooperation with government on security issues. They are not required to do so by law. Their clients, customers, and shareholders are concerned more with the bottom line than security measures. They do not trust government competence or motives. Would information volunteered to the government land in the hands of their competitors or result in higher tax bills?

Without action by shippers and businesses, however, terrorists can easily exploit the vulnerabilities of global trade and transportation infrastructure, as they did September 11th. Dr. Stephen Flynn, Senior Fellow at the Council on Foreign Relations and a Coast Guard Commander, explains the ease with which terrorists could smuggle a weapon of mass destruction into the United States using commercial shipping:

[A] weapon of mass destruction could be loaded into a container and sent anywhere in the world[.] Osama bin Laden could have a front company in Karachi, Pakistan, load a biological agent into a container ultimately destined for Newark, New Jersey, with virtually no risk that it would be intercepted. He could use a Pakistani exporter with an established record of trade in the United States. The container could then be sent via Singapore or Hong Kong to mingle with the half a million containers that are handled by each of these ports every month. It could arrive in the United States via Long Beach or Los Angeles and be loaded directly onto a railcar or truck for the transcontinental trip. Current regulations do not require an importer to file a cargo manifest with U.S. Customs until the cargo reaches its "entry" port—in this case, Newark, 2,800 miles of American territory away from where it first entered the country—and the importer is permitted 30 days's transit time to make the trip to the East Coast. The container could be diverted or the weapon activated any-

where en route, long before its contents were even identified as having entered the country.²⁰

Unfortunately, this scenario is not science fiction. Businesses do little to police themselves, and pressure to facilitate trade means that established shippers receive little scrutiny from government authorities, even though they are easily compromised. In early January 2002, Federal Express unknowingly shipped a highly radioactive, 300 pound package, emitting radiation at an estimated rate of ten rem per hour. In a half hour, a person exposed to that much radiation would exceed the annual limit for exposure and within hours would suffer symptoms of radiation poisoning. Even in this case, FedEx officials do not believe this shows the need for greater security precautions on their part. A terrorist organization would not have been able to ship dangerous materials, the company hypothesized, "because extra precautions would have been taken in the case of an unknown shipper or recipient."²¹ Why do FedEx and other shippers assume that terrorists cannot compromise or use legitimate shippers and businesses as conduits and fronts, the same way that drug smugglers currently do?

The response of critical infrastructure owners and operators to increase security, the increased vigilance of the banking and financial communities to curtail money laundering, the global media's decisions about airing the video tapes of Osama bin Laden, the decisions by pharmaceutical companies concerning CIPRO production and pricing, the reactions of doctors and hospitals to try to diagnose and halt the spread of anthrax and other infections—all of these are private sector activities to protect public safety in the war on terrorism.

CATHOLIC SOCIAL TEACHING AND THE WAR ON TERRORISM

While ethicists have tackled private sector responsibilities regarding labor, human rights and the environment, they have not tackled the issue of private sector responsibilities for protecting and defending public safety, the lives of innocents, and the common good. Business ethics has a long history. Globalization has given renewed attention to these efforts to consider the ethical responsibilities of nonstate actors, from multinational corporations, to intergovernmental organizations and nongovernmental organizations. Recent years have seen the

20. Stephen E. Flynn, *Beyond Border Control*, 79 FOREIGN AFF. 59, 63 (2000).

21. Matthew L. Wald, *Fed Ex Shipped a High Radiation Package Without Knowledge*, N.Y. TIMES, Jan. 10, 2002 at A22.

multiplication of codes of conduct for nonstate actors, from the UN's Global Compact to ISO9000, ISO14000, SA8000, corporate, IGO and NGO codes of conduct. The multiplication of codes has itself caused much debate. Will too many codes weaken ethical behavior, allowing actors to forum-shop for low bar ethical criteria they can use for public relations effect, to appear to be addressing problems while ducking ethical scrutiny for their actions? This criticism has been leveled at Nike regarding working conditions in Asian factories and at Shell Oil in Nigeria. Both companies responded to high profile criticism by enacting voluntary corporate codes of conduct. But how seriously are these codes implemented, and what are the sanctions if voluntary codes are not implemented? *Yet where are delineation of the ethical responsibilities for protecting public safety and defending innocents in these growing codes of conduct for private sector actors?* Where are the criticisms of these codes of conduct for these omissions? Where are discussions of the private sector's responsibilities to the common good?

Catholic social teaching can offer useful guidance here. Catholic social teaching emphasizes the priority of the common good.²² By this logic, public safety functions should trump narrower concerns of corporate profits. As Pope John Paul II notes, a globalization of solidarity is needed. Solidarity means standing in unity, acknowledging the fundamental dignity of all human life, and seeking authentic human development for all God's people, not merely material enrichment. Belief in the fundamental dignity of all human life also entails our baptismal responsibility as priests, prophets, and kings, to speak out, and to speak for those who cannot speak for themselves, including future generations. Responsible stewardship of all creation, including the environment, is emphasized. The preferential option for the poor also signals our obligations to the world's most vulnerable.

The globalization of finances, the economy, trade and work must never violate the centrality of the human person nor the freedom and democracy of peoples Globalization is a reality present in every area of human life, but it is a reality which must be managed wisely. Solidarity too must become globalized.²³

22. Pope John XXIII, *supra* note 13; HARVEST, *supra* note 13.

23. Pope John Paul II, Greeting of the Holy Father After Mass (May 1, 2000), at http://www.vatican.va/holy_father/john_paul_ii/speeches/documents/hf_jp-ii_spe_20000501_jub-workers_en.htm.

These teachings are particularly important for U.S. business people. As a wealthy country and as the population of the world receiving a large share of globalization's benefits, we have greater responsibilities for protecting and defending the common good. Because U.S. businesses often have greater resources than many businesses abroad, we have greater ability to improve the security of critical global infrastructure, and therefore greater responsibilities to do so. As the parable of the talents instructs, more is expected from those to whom more is given. The U.S. Catholic Bishops describe it:

Our nation, as a principal force for economic globalization, must do more to spread the benefits of globalization to all We must work for the common good, measured not just in economic, political, or security terms, but also in . . . all that is needed for a virtuous and spiritual life consistent with authentic human dignity. While our first responsibility is to the common good of our own society, we have an inescapable obligation to the global common good as well.²⁴

We cannot remain indifferent or "neutral with respect to that goal."²⁵

Fighting this "new kind of war" raises many other ethical concerns that are beyond the purview of JWT. Hundreds of Taliban and al Qaeda fighters have been captured in Afghanistan and sent for detention at the U.S. Naval Base in Guantanamo Bay, Cuba. The United States argues that most are detainees, not prisoners of war.²⁶ The United States argues that the detainees do not meet the criteria for POWs specified in the Geneva Convention, Convention III, Article 4, paragraph 2. They do not adhere to the conventions of warfare, do not wear uniforms with insignia clearly displayed, they do not carry their weapons openly, and they were not subject to a hierarchical chain of command. However, the definition of POW is more expansive than merely paragraph 2; Article 4 delineates other categories of persons who fall into the hands of the enemy and are POWs.²⁷ The United States argues that since those detained are not POWs, they are not entitled to the protections of the Geneva Convention, including being returned home after hostilities have ended.

24. A PASTORAL MESSAGE, *supra* note 13.

25. *Id.*

26. Steve Vogel, *Afghan Prisoners Going to Gray Area: Military Unsure What Follows Transfer to U.S. Base in Cuba*, WASH. POST, Jan. 9, 2002, at A1.

27. Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135.

If the detainees are being held on suspicion of having committed crimes, including terrorism and war crimes, surely the charges against them must be made, and they would be entitled to due process (whether through a military tribunal or civilian court). On what ethical basis can captured combatants be incarcerated indefinitely with no crimes charged against them, and no prospect for return as a POW? Do we want to follow the British example in their treatment of suspected IRA terrorists, of forced confessions, detention without charges, denial of POW status, and restricted or absent due process?

In order to gain intelligence and access to Afghanistan, the United States has allied with many countries with extremely poor human rights records, such as Uzbekistan, Tajikistan, and Sudan. Is it right to support repressive regimes in the fight against terrorist groups?

How does dissatisfaction with globalization help mobilize sympathy for terrorist groups such as al Qaeda? Does al Qaeda's rhetoric of the United States as Satan find a sympathetic hearing among those who feel globalization serves U.S. interests, not their interests? If perceived or real injustices of globalization incite violent reactions, then addressing the ethics of globalization assumes greater urgency in light of the war on terrorism. If perceived or real injustices by private sector actors fuels violent reactions to globalization (for example, belief that Western corporations rule the world), then private sector actors again bear responsibilities for public safety.

Resources are needed to combat terrorism, at a time when a recession and tax cuts have left government coffers low. Who will pay for the war on terrorism, and how? Will poverty programs be raided in an effort to pay for increased security spending? Will unemployed workers receive the same government largesse as large corporations that have already received government loan and aid relief?

Will immigrants be restricted from entering the country, from becoming citizens, or from traveling and communicating with family? Because terrorist networks operate within civil society, who in civil society will bear the brunt of law enforcement efforts to discover and root out terrorists?

Should terrorists be subject to the death penalty? European allies are refusing to extradite prisoners to the United States to stand trial because the Europeans oppose the death penalty. Members of al Qaeda may seek the death penalty, to be perceived as martyrs at the hands of the "evil" United States, and thereby win favor for their cause. Beyond the ethics of capital

punishment, there are extenuating questions of practical ethics. Which option will protect and defend more lives? Forgoing the death penalty keeps prisoners alive who may later cooperate with law enforcement and reveal important information about terrorist networks. After the September 11th attacks, the convicted al Qaeda millenium bomber, Ahmed Ressam, provided additional important information to law enforcement officials about al Qaeda "sleeper cells" in the United States. However, incarcerating convicted terrorists may risk additional terrorist attacks. Israel has frequently suffered attacks by groups demanding the release of their imprisoned comrades.

The situation may be AOS (all options stink), as some refer to it.²⁸ But as JWT testifies, ethics apply even in war. We are still moral beings with ethical responsibilities, even when all options stink. In fighting the war on terrorism, will we become more like our opponents than we would like, and less able to address more long-standing questions of the justice of globalization? If so, then regardless of JWT's applicability to the use of force in the Afghan mountains, the war on terrorism might become a very unjust war overall.

While military force may be necessary in fighting the war on terrorism, it is not sufficient to render the terrorists unable to continue to do harm, or to protect and defend the common good and the lives of innocents. JWT does a good job of describing the ethical responsibilities of public authorities to protect public safety and defend innocents. But globalization increases the ethical responsibilities of private sector actors for protecting the common good and safeguarding innocents. The war on terrorism illustrates the need for private sector involvement in safeguarding public security. Ethicists must pay more attention to supplementing JWT to provide a fuller understanding of the ethics of the war on terrorism.

28. See generally Michael Howard, *What's in a Name?*, FOREIGN AFF. 11 (Jan./Feb. 2002).