



1-1-2012

Death before Dishonor or Dishonor before Death - Christian Just War, Terrorism, and Supreme Emergency

Darrell Cole

Follow this and additional works at: <http://scholarship.law.nd.edu/ndjlepp>

Recommended Citation

Darrell Cole, *Death before Dishonor or Dishonor before Death - Christian Just War, Terrorism, and Supreme Emergency*, 16 NOTRE DAME J.L. ETHICS & PUB. POL'Y 81 (2002).

Available at: <http://scholarship.law.nd.edu/ndjlepp/vol16/iss1/5>

This Essay is brought to you for free and open access by the Notre Dame Journal of Law, Ethics & Public Policy at NDLScholarship. It has been accepted for inclusion in Notre Dame Journal of Law, Ethics & Public Policy by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.

DEATH BEFORE DISHONOR OR DISHONOR BEFORE DEATH? CHRISTIAN JUST WAR, TERRORISM, AND SUPREME EMERGENCY

DARRELL COLE*

In his introduction to a recent anthology of war writing, John Keegan concludes:

Many who read it [this anthology] will understandably be horrified by the record of inhumanity that the testimonies from the non-European world depict. The history of all forms of warfare is, however, essentially inhumane. That should be the message of this collection of warrior words from the European and non-European worlds.¹

Warfare is a conflict, brutal to varying degrees, in which one group of people uses force to exert its will on another group of people. This has been the essential nature of warfare from its conception. War could be and usually was brutal from the very beginning, and it continues to be so. This is an important point. New technologies have not changed the essential nature of battle. Certainly technological advances have given us the ability to make battle more destructive (and sometimes less destructive), but these technological advances do not alter the essential nature of war.

Technological advances, moreover, have done nothing to improve the behavior of fighting ground troops, the necessity of which is still evident, barring nuclear holocaust. No amount of conventional weaponry can eliminate the process of ground fighting somewhere down the line, even if it is mere "clean up" or "occupation" duty, which always entails some amount of bitter fighting. In other words, technological advances have not and will not eliminate scenes like this one:

The Thracians bursting into Mycalessus sacked the houses and temples, and butchered the inhabitants, sparing neither youth nor age but killing all they fell in with, one after the other, children and women, and even the beasts

* Darrell Cole, PhD is a Visiting Instructor in the Department of Religion at the College of William and Mary. He is also a contributor to *FIRST THINGS: THE JOURNAL OF RELIGION AND PUBLIC LIFE*.

1. *THE BOOK OF WAR: 25 CENTURIES OF GREAT WAR WRITING* xix (John Keegan ed., 1999).

of burden, and whatever other living creature they saw; the Thracian people, like the bloodiest of the barbarians, being ever most murderous when it has nothing to fear. Everywhere confusion reigned and death in all its shapes; and in particular they attacked a boys' school, the largest there was in the place, into which the children had just gone, and massacred them all. In short, the disaster falling upon the whole city was unsurpassed in magnitude, and unapproached by any in suddenness and horror.²

One could all too easily transfer Thucydides's prose to numerous more recent episodes in Bosnia. Battle behavior is often, as Keegan suggests, inhumane, but it need not be unjust, and this is the essential point of classical Christian just war doctrine. Christian just warriors such as Aquinas and Calvin wish to deny the lesson Simone Weil draws from her reading of Homer's *Iliad*: that human beings lose their humanity when they fight in war.³ It is also one of the key differences between Christian just war thinking and liberal humanist thinking on war, which maintains that war is not merely inhumane but positively inhuman. Just warriors worry that when we label war as something inherently "inhuman," we simply give ourselves free reign to do inhuman things once it begins. History seems to bear this out to some degree. As soon as we start wringing our hands with self-imposed guilt, our own evil actions may follow—as they seemed to do in both World Wars. Once we begin to believe that we are acting viciously by the very nature of the case, then the temptation becomes to be a little more vicious and guarantee victory.

"Dirty hands" morality tells us that we have already crossed a moral threshold in fighting a war to begin with, and once having crossed that threshold, we may be tempted to make sure that it was worth it and guarantee victory. And once we have guaranteed victory, we may be tempted further to go ahead and be even more vicious in order to put an end to the whole sordid affair. In short, once the first moral threshold is crossed, psychologically speaking, it becomes easier to move further away from that threshold. It is just this kind of reasoning that may be traced in the Allied war planners in World War II. Certainly, it is just this kind of thinking that drives just war critics like Paul Fussell to

2. Thucydides, VII.29.

3. See Simone Weil, *The Iliad or the Poem of Force*, in *REVISIONS: CHANGING PERSPECTIVES IN MORAL PHILOSOPHY* 222, 239 (Stanley Hauerwas & Alasdair MacIntyre eds., 1983). Only a pacifist—and a brilliant one such as Simone Weil—could so read Homer.

defend the Allied use of atomic bombs on Japan.⁴ When, however, we hold that war is something human, and as such, should be something reasoned, purposeful, and just, then we have good reasons to limit the kinds of wars we fight and how we behave once the fighting begins.

I want to return to Thucydides for a moment. In his history of the Peloponnesian war, Thucydides attempted, among other

4. The question of whether we did especially vicious things in World War II because we were already engaged in self-confessed "dirty hands" practices (a sort of progressive decay in morality) or whether we did not see ourselves as doing anything vicious in going to war, or even in doing things like obliteration bombing, is, admittedly, an open one. I have two reasons for preferring the former answer. First, the popular reasoning, given full evidence in Fussell, that what we did in Japan with atomic weapons we had already been doing in Germany in the way of obliteration bombing is, I believe, a perfect example of "dirty hands" moral regression. The reasoning in Fussell goes like this: we were already doing something morally evil when we saturated German cities with bombs, so there is nothing wrong with committing more evil in order to get the job done as quickly as possible. I suggest that noncombatant immunity is an important moral threshold, and once crossed, it is hard to get back, but very easy to keep going forward. The second reason comes from my reading of John Ford's essay "The Morality of Obliteration Bombing," which argued that obliteration bombing was a "regression toward barbarism," a regression that was probably psychologically impossible for the war leaders to deny. See John C. Ford S.J., *The Morality of Obliteration Bombing*, in *WAR IN THE TWENTIETH CENTURY* 138-77 (Richard B. Miller ed., 1992). For anyone to deny that one intention of obliteration bombing is to harm innocent people is very nearly a psychological impossibility, since the very thrust of the reasoning behind the strategy is to terrorize citizens. I should also note here the disgust that some war leaders expressed over the tactic, exemplified by General George Patton—not exactly the most merciful leader in modern war—who called saturation bombing "barbaric and sadistic." See GEORGE S. PATTON JR., *WAR AS I KNEW IT* 288 (1995). Our war leaders seemed to realize, even if only very vaguely, that they were doing something new and evil. Churchill even openly criticized the Nazis for the practice of saturation bombing in the early days of the war. Ford argued that the war leaders' consciences were not "sufficiently delicate" to trouble them. Ford, *supra* note 4, at 62. I suggest that one important reason why their consciences were not "sufficiently delicate" is "dirty hands" moral regression. The overwhelming desire to shorten the war *at any cost* may be evidence of this. Churchill may have been in a desperate situation in the early days of the war, and may have wrestled mightily with his conscience when he first approved of obliteration bombing practices. But Churchill continued to support the practice even when it became obvious that Britain was not in a supreme emergency. He even encouraged the use of the atomic bombs on Japan. Again, I suggest that Churchill crossed a threshold when he approved of obliteration bombing tactics, a threshold that not only could he not get back over, but one from which he continued to slip further away. Obviously I do not limit such criticisms to Churchill and the British war leaders, for as even Rawls points out, "in the case of Hiroshima many involved in higher reaches of government recognized the questionable character of the bombing *and that limits were being crossed*." JOHN RAWLS, *COLLECTED PAPERS* 569 (1999).

things, to show how the decline in Athenian fortune corresponded roughly to a decline in virtue. In other words, Thucydides was "doing ethics" (to use modern jargon) as he was writing history. The moral of the story is that warfare reduces people to their essential nature, and for those without virtue, that nature is horrible to look upon. The story of the Peloponnesian war is, in a moral sense, a timeless story, for it presents the story of most wars in its essential form. As Victor Davis Hanson puts it, Thucydides' story is "above all an intense, riveting, and timeless story of strong and weak men, of heroes and scoundrels and innocents too, all caught in the fateful circumstances of rebellion, plague, and war that always strip away the veneer of culture and show us for what we really are."⁵

How groups of people act and react in violent situations says a lot about what kind of people they are. As Alasdair MacIntyre suggests, there is no ethical dimension to warfare; rather, ethics "is the heart of the matter."⁶ Part of Christianity's very identity can be found in how it reacts to warfare. This is not to say that Christianity can be understood exhaustively *vis-à-vis* its reaction to the violent situation, but it is to say that we ought to be able to understand in part what it means, morally and spiritually speaking, to be a Christian by looking at how Christians respond to warfare.

The classical Christian just war doctrine looks at war as something reasoned, purposeful, and possibly just. Against liberal humanism, the classical Christian position insists that it is possible for warfare to be a virtuous activity in which the failure to engage would mean to behave in an unjust manner. Pundits never tire of telling us that we now live in a post-Christian era, but even if true, Christians should be wary of modifying their basic moral norms simply because the governing authorities no longer privilege them. Murder is wrong whether the church has a say in the governing structure or not. Refusing to uphold justice is wrong whether the state privileges the church or not. Why Christians ought to do things like fight just wars, what kinds of wars Christians ought to support, and what kinds of combat Christians ought or ought not to engage in, are things we can learn from the classical Christian just war doctrine.

Christians ought to fight just wars because fighting just wars is a divine-like activity that allows us to follow Christ "at a distance." Christians, that is to say, through the working of the Holy

5. Thucydides, *supra* note 2, *Introduction*, xxiii.

6. Alasdair MacIntyre, *The Wrong Questions to Ask About War*, THE HASTINGS CENTER REPORT, Dec. 1980, at 40.

Spirit become faithful followers of Christ when they fight just wars. God as revealed in Holy Scripture is a God who hates evil and he sometimes uses his children to restrain evil. The normative structure of this restraint is found in the governing authorities, which are ordained by God just for this purpose. Nevertheless, not every kind of fighting is a legitimate way of following Christ. Just warriors insist that acts of force must therefore be acts of justice and love if they are to have a divine quality. Thus Christians should not fight unjust wars, nor should they fight unjustly or unlovingly in war. But what counts as unjust or unloving? Here is where Aquinas can help us. Unjust wars are those wars engaged in by those not in proper authority, or those engaged in without a just cause, or those engaged in with evil intention. These are definite and unmovable strictures. They comprise the Christian just war, and Christians cannot and should not support any proposed war that violates them.

More indefinite is what counts as just or loving acts in war. A great deal of this is culture-bound; that is to say, what counts as virtuous action in conflicts will vary from place to place and from time to time. Nevertheless, the Christian just war doctrine has set up two broad strictures on combat behavior: the hoped-for good of our acts must outweigh the expected but unintentional evil, and we ought not to target innocent people. What counts as "innocent" in modern, nationalized warfare is very tricky, but certainly we can discriminate, for example, in favor of the very young, the very old, and the sick. Put another way, we can state confidently that we ought not to harm intentionally those who are able to play little or no direct role in the enemy's ability to attack and defend. If I am right about this, just warriors will be fundamentally opposed to terrorism and the liberal doctrine of supreme emergency, which is nothing more than a justification for Western terrorism.

I. JUST WARRIORS AND SUPREME EMERGENCY

The governing authorities represented by modern nation states are useful things that Christian just warriors ought to support in some ways. One way the state might deserve Christian support is when it decides to fight a just war (a war that has a just cause and in which the state has no evil intention). Just warriors must, of course, ask themselves if the state is likely to use just force justly in the proposed conflict, and then decide if the risks are too great for evil. What just warriors ought not to do is to support wars that will issue inevitably into insoluble moral problems. Alasdair MacIntyre has identified four principles for

avoiding such dilemmas, and they are well worth considering, for they represent a useful meeting ground for Christians and the modern, liberal nation-state ethos on moral practices in war. They are:

1. The only justification for war is either self-defense (to preserve our liberty) or to preserve a people's liberty that we have pledged to uphold.
2. We must not use greater force than is necessary to preserve liberty.
3. We must not fail to threaten war or wage it whenever we are confronted with what is stipulated in the first principle.
4. We ought not to pledge military assistance to those whom we ought not or cannot defend.⁷

MacIntyre's criteria are especially helpful to those whose allegiance to the state can be characterized as Augustinian—an allegiance to the state for bare-bones protection.⁸ Just warriors will find it difficult to support wars undertaken to punish or redress a wrong (two justifications found in classical just war doctrine) when the state does little more than provide protection and insists that it has a positive duty to make sure that it is not influenced by Christianity. Just warriors, however, should not find it difficult to preserve the structure that restrains enough evil to make a moral life possible. Just warriors can (and should) even support the idea that certain other "distant neighbors" are worthy of support should the need arise.

The second and third principles are embraced wholeheartedly by the Christian just war tradition, for the use of too much force betrays a lack of good intention. Also, the positive demand for engagement in war when justice is threatened fits nicely with the just warrior's demand for engagement in those same instances. One of the lessons we learn from just war defenders such as Aquinas and Calvin is that it is a failure of virtue, both

7. *See id.* at 41.

8. Bare-bones protection is certainly a good, for it allows us to prosper, at least to some degree, as moral agents in intermediary moral communities. Nevertheless, two additional comments need to be noted concerning loyalty to a government based only on its effectiveness in providing protection. First, if protection is all a citizen can expect from the state, one may wonder with Peter Geach whether that state demands no more loyalty from its citizens than a "protection racketeer" does from its clients. *See* PETER GEACH, *THE VIRTUES* 124 (1977). Second, if the effectiveness of that protection becomes as unstable and unpredictable as the protection offered by a racketeer, the demand for loyalty becomes correspondingly weaker. *See id.*

moral and theological, when we fail to fight a just war that we ought to be fighting.

The last principle is a bit tricky. First, western nations are apt to make agreements with other nations that Christians in general will not want to support. Christians should not, for example, fight in any war that would defend the present regime in China. Or, to take a concrete example from the past, if we had known the facts about Vietnam as they are known about, say, present-day China, we ought not have supported or participated in the Vietnam conflict because South Vietnam was not the kind of ally we ought to be facilitating (nor was North Vietnam for that matter). Second, it is difficult in the present day, with our ability to go just about anywhere in the world in a matter of hours, to distinguish exactly who we are capable of helping and who we are not. In one sense, we can help anyone we want if we are willing to put all our forces into the conflict. But, barring a potential world war, that would be unwise. So we have to decide how much force we are willing to expend for "humanitarian purposes," and then decide if that is enough to get the job done. Clearly our commitment did not meet our needs in Somalia.

One of the great values of MacIntyre's moral criteria for war is that they help Christian citizens of liberal nation states decide when their nation-state is fighting the sort of war in which Christians ought to be involved. This is no small work when one considers how recent liberal scholars have defended a political doctrine that would allow nations to target innocent people for the sake of preserving their liberal, democratic way of life. I am of course referring to the political doctrine of supreme emergency.

One of G.E.M. Anscombe's chief complaints about modern moral philosophy is that it constructs formally beautiful theories of ethics, which always allow someone to commit dreadful acts in the name of doing something that is the "morally right" thing to do.⁹ Michael Walzer's concept of "supreme emergency" exemplifies this kind of thinking. Walzer's just war doctrine, though he insists it is detached from foundations, is based upon a theory of human rights:

There is a particular arrangement, a particular view of the moral world, that seems to me the best one. I want to suggest that the arguments we make about war are most fully understood . . . as efforts to recognize and respect the rights of individual and associated men and women. The

9. See generally G.E.M. ANSCOMBE, *COLLECTED PHILOSOPHICAL PAPERS III: ETHICS, RELIGION, AND POLITICS* 33–34 (Basil Blackwell ed., 1981).

morality I shall expound is in its philosophical form a doctrine of human rights.¹⁰

Working within the presuppositions of human rights, Walzer constructs an impressive case-based account of how the just war criteria can and should operate. However, in the chapter entitled "Supreme Emergency," the authority of the criteria "explodes." In a nutshell, Walzer argues that if we are faced with the complete collapse of civilization as we know it, then there are no actions that we can take against such an evil power that could be described as morally unjustified, so long as they are the only measures available to us. For example, if a nation with the characteristics of Nazi Germany were on the verge of taking over our civilization, there are no tactics too vicious to use so long as we are faced with imminent defeat. The historical example employed by Walzer is the Allied decision to use saturation bombing on German cities during the early crisis days of World War II. The important thing to notice is that even though saturation bombing is inherently unjust (innocent civilians are deliberately and willfully killed; that is, it is part of the very purpose of saturation bombing to kill enough innocent civilians in order to demoralize the enemy), it was the necessary thing to do in order to ensure the survival of the anti-Nazi West. As Walzer puts it: "necessity knows no rule."¹¹ Walzer co-opts this kind of reasoning into the present political situation to include the just possession and possible use of nuclear arms in similar circumstances.

Walzer never tries to make such bombing tactics honorable, but merely morally acceptable in necessary circumstances. In fact, he points out with approval how British Air Marshall Arthur Harris (the brain behind saturation bombing) was not honored by Churchill after the war, and, hence, was effectively dishonored.¹² Harris nevertheless arguably made Allied victory possible

10. MICHAEL WALZER, *JUST AND UNJUST WARS: A MORAL ARGUMENT WITH HISTORICAL ILLUSTRATIONS* xxix-xxx (1992).

11. *Id.* at 254.

12. *See id.* at 323-25. We might question whether the *de facto* dishonoring of Harris would carry much moral weight in today's culture, and, indeed, if it carried much weight in Harris's own time. As Peter Berger has suggested, honor, like chastity, is now an outdated concept. *See* Peter Berger, *On the Obsolescence of the Concept of Honor*, in *REVISIONS: CHANGING PERSPECTIVES IN MORAL PHILOSOPHY*, *supra* note 3, at 172. Honor expresses status and group solidarity, and it also provides links between self and community and self and ideal community (i.e. the community honors in the exceptional citizen that which it wishes to see in all its citizens). Modern culture, however, has replaced honor with dignity, for dignity admits to no social roles (and therefore no hierarchy). *See id.* The military world is still an internal hierarchical world, but in this respect, as in so many others, the military diverges from common culture.

insofar as saturation bombing may have prevented the Nazis from conquering Britain, and then, possibly, the rest of Europe.¹³ Harris was therefore engaged in acceptable moral action (but not honorable action) when he ordered saturation bombing missions *in the time of supreme emergency*.¹⁴

Walzer's consequentialism leaves him particularly vulnerable to just war critics such as Paul Fussell, who, in an exchange with Walzer, argued that war is a nasty business that should be brought to an end as speedily as possible by any means. Insofar as the atomic attacks on Hiroshima and Nagasaki hastened the end of the war, they were, argues Fussell, the right thing to do.¹⁵ Walzer responds to Fussell by agreeing that wars should be concluded as speedily as possible, but that there are limits on how we can bring them to a conclusion. One limit for Walzer is the observance of noncombatant immunity. Fussell's parting reply in the exchange is to point out that Hiroshima and Nagasaki were in fact proper military targets (along with a typical, for Fussell, *ad hominem* and *non sequitur* that Walzer was only ten years old in 1945 and therefore cannot possibly be in a position to render a good moral verdict).

Fussell is plainly wrong about the matter since part of the very reason for dropping the bombs was to kill so many people—innocent civilians as well as military personnel—that a horrified and panic-stricken Japan would immediately and without condition capitulate. But what Walzer could not deny is that if the Allies had been confronted with a “supreme emergency” in Japan as they had been in Europe, then they could have been morally justified in dropping atomic bombs, in as much as the action could be described as morally acceptable in circumstances of supreme emergency. Put differently, had the British possessed atomic weapons during the early days of saturation bombing (the time in which Britain was undergoing a legitimate “supreme

Thus, the dishonoring of a military official will carry moral weight only insofar as that military official exists in a world in which honor has not given way to mere dignity.

13. See generally WALZER, *supra* note 10, at 261, 323–25. This will always be a debatable point, but for the sake of giving Walzer's argument the benefit of the doubt, I offer no objection here.

14. Harris's acceptable moral practice of saturation bombing ended, according to Walzer, as soon as the condition of supreme emergency ended. Thus, all of the saturation bombing that took place after the supreme emergency elapsed (say, at least beginning with early 1943) was simple “terror bombing,” which is not a “dirty hands” act but a “criminal activity.” WALZER, *supra* note 10, at 323.

15. See PAUL FUSSELL, *THANK GOD FOR THE ATOM BOMB AND OTHER ESSAYS* 13–44 (1980), for Fussell's argument and Walzer's response.

emergency”), then Walzer would have to admit that Britain could have been justified in dropping atomic bombs in Europe. Unsurprisingly, one of the few regrets Fussell expresses concerning the use of atomic bombs in World War II is that the bombs were not ready early enough to use on the Germans:

If only [the atomic bomb] could have been rushed into production faster and dropped at the right moment on the Reich Chancellery or Berchtesgaden or Hitler's military headquarters in East Prussia . . . much of the Nazi hierarchy could have been pulverized immediately, saving . . . the lives of around four million Jews, Poles, Slavs, and gypsies, not to mention the lives and limbs of millions of Allied and German soldiers. If the bombs had only been ready in time, the young men of my infantry platoon would not have been so cruelly killed and wounded.¹⁶

Given what Walzer has said about supreme emergencies, he seems to be very close to Fussell on this point. Walzer is at pains to defend the just war criteria against Fussell's claims about the moral appropriateness of dropping the atomic bombs on Japan, pointing out that there are limits to how a just nation can go about winning a war. The problem for Walzer is that in times of true “supreme emergency,” there seem to be no limits on what a just nation may do to survive (e.g., when a nation may be all that stands between Nazi rule and the discontinuance of western democracy). Thus we see that the horrors that Walzer's consequentialism may countenance are those very horrors Fussell points to when he says that we have no reason to be ashamed of our actions against Japan, because we had been destroying citizens all along “in raids on Hamburg and Berlin and Cologne and Frankfurt and Mannheim and Dresden and Tokyo.”¹⁷

John Rawls, in his essay “Fifty Years After Hiroshima,” condemns the “war is hell” doctrine that countenances vicious acts in war as the “nature of the game.”¹⁸ Rawls maintains that “[t]here is never a time when we are free from all moral and political principles and restraints.”¹⁹ Rawls nevertheless follows Walzer in making “supreme emergency” an exemption to the laws of war. Supreme emergency is that doctrine which gives any nation a right to use any means whatsoever to save itself.

16. *Id.* at 32.

17. *Id.* at 31.

18. RAWLS, *supra* note 4, at 572.

19. *Id.*

Rawls, following Walzer, argues that “[civilians] can never be attacked directly except in times of extreme crisis.”²⁰ Therefore, we can violate human rights—we can directly attack civilians—if we are sure that we can do some “substantial good” by so doing, and if the enemy is so evil that it is better for all well-ordered societies that human rights be violated on this occasion. Rawls, like Walzer, believes that the threat of Nazi Germany is a possible historical example of a just Supreme Emergency Exemption. Constitutional democracy in Europe was at stake; a “new Dark Age” (to use Churchill’s rhetoric) threatened. Thus Europe may have been faced with a supreme emergency in the early days of World War II, and, hence, Britain may have been justified in its use of saturation bombing *in the early days of the war*.

Rawls realizes that the Supreme Emergency Exemption is contrary to traditional Christian just war doctrine, but he maintains that the statesman must “be able to distinguish between the interests of the well-ordered regime he or she serves and the dictates of the religious, philosophical, or moral doctrine that he or she personally lives by.”²¹ This is the crux of the matter, for it is a clear case, to use Oliver O’Donovan’s words, of “pitting political order against human fulfilment [*sic*].”²² In the eyes of the just warrior, Rawls wants to drive a wedge between what it means to flourish as a human being (doing God’s will) and acting for the good of society (preserving it with evil acts—acts contrary to God’s will). For the just warrior, then, Rawls’s liberalism makes liberal society, if not an absolute good, then certainly a good to be sought above God. The reaction of the just warrior to all this is best captured, again, by O’Donovan:

A “pure” political theory which can make it a matter of intellectual conscience to disinterest itself in the transcendent is not one that any humane thinker need feel guilt about rejecting. If political order must be conceived in that way, it would be well, perhaps, that theology should be anti-political.²³

For Christians the interests of the well-ordered regime can never be given a value higher than God’s will. No regime is worth vicious acts for its survival. For in so preserving a regime, we shape ourselves into something not pleasing to God; we become creatures who rely on viciousness to survive. Christian just war

20. *Id.* at 567.

21. JOHN RAWLS, *THE LAW OF PEOPLES* 105 (1999).

22. OLIVER O’DONOVAN, *THE DESIRE OF THE NATIONS: REDISCOVERING THE ROOTS OF POLITICAL THEOLOGY* 122 (1996).

23. *Id.*

politics insists that human beings please God, that they act virtuously even when faced with extinction.

Just warriors insist that just war is a positive good. This does not mean that virtuous citizens ought to be looking for any excuse to fight a just war, but it does mean that when circumstances arise that demand a just use of force, the just warrior knows that it is virtuous to engage in such a fight. Because just war is a positive good, and because it is a virtuous activity to fight just wars justly, the constraints on fighting are found in the very reasons for fighting. On this account, soldiers do not suspend our ordinary moral norms when they fight virtuously, but actually fulfill one of their functions as human beings living in a fallen world. But in fulfilling this function, the soldier must act virtuously. Acting viciously in war is to cease to act in a way that contributes to human flourishing. Remember, on the classical view, pleasing God and human flourishing are inextricably linked; we cannot flourish as human beings unless we please God.

Against Walzer and Rawls' "supreme emergency" exemption, the just warrior argues that it is better to be occupied by a people such as the Nazis than to behave like Nazis. Walzer and Rawls believe that to be occupied by a Nazi-like regime would mean the end of everything we in the West hold dear. There are two answers to be made. First, it probably does not mean the end of all we hold dear, since no regime however vicious and totalitarian can last forever. Second, even if it did mean the end—the very and final end—of all we hold dear, then we are holding the wrong things too dearly. No true good will demand that we act viciously in order to preserve it. If liberal constitutional democracy demands that we act viciously to preserve it, then liberal constitutional democracy is no true good. Of course no political theory demands that it be upheld, rather defenders of political regimes demand that they be preserved. Walzer and Rawls tell us that liberal constitutional democracy is a good that we ought to preserve even if it means we ought to act viciously to do it. For the Christian, this demand betrays a disordered desire for a temporal good. In the eyes of the Christian, Rawls and Walzer have made the temporal political order a good to be sought above and against a permanent and the final good—God. Thus, to follow Rawls and Walzer in this matter is to treat liberal constitutional democracy as an idol. Christians ought to value constitutional democracy; they should value it to the point of dying for it if that becomes necessary, but they should never value it so much that they are tempted to kill innocent people to preserve it; they should never put the survival of their political regime above God. The idea that a state ought to be able to commit any vicious act

whatsoever in order to survive is, I have pointed out, part of the liberal political doctrine of two eminent political liberals—Walzer and Rawls. Ironically enough, these two liberal thinkers have something important in common with the religious-political beliefs held by certain groups of Islamic fundamentalist terrorists, and that is what I turn to now.

II. JUST WARRIORS AND TERRORISM

The recent terrorist attacks on the United States have brought many people face to face with the fact of terrorism for the first time. People are now more than ever beginning to question the morality of such actions. Terrorism, however, has been around for a long time. First, let us get our facts straight. Terrorism has one purpose: to weaken the morale of a nation in order to move that attacked nation to desist in some activity the terrorists find harmful to them. The usual method employed is random murder of innocent civilians, though government and military targets are sought as well.

Few moralists wish to justify acts of terrorism. Walzer, for example, devotes an entire chapter to denouncing the practice. Walzer nevertheless is able to draw moral distinctions between an older form of terrorism found in the West in the early half of the twentieth century (exemplified by Russian revolutionaries, the IRA, and the Stern Group) and a newer form of terrorism found in the East and Mideast in the last half of the century (exemplified by Mao Tse-tung, the FLN, and Muslim fundamentalists). Russian revolutionaries, the IRA, and the Stern Group attacked people that the accepted war convention usually protected: high-ranking government officials. But these terrorists often checked their acts of terrorism when innocent people could get killed. Thus, the “earlier” terrorists still recognized that some acts of violence could not be carried out justly. Their targets were the government officials and politicians of regimes thought to be oppressive. There was, then, a recognized group of noncombatants. The distinguishing mark of the “newer” terrorism is that there is no such recognized group. For those who follow the teachings of Mao Tse-tung or the Hamas, all members of an oppressive nation are legitimate targets.

In the late 1950s, the NLF (supporting North Vietnam) assassinated 7,500 South Vietnamese people; another 6,300 were abducted. But the range of targets soon expanded to any citizen thought to be a supporter of the government—priests, landowners, or any peasant too friendly with a landowner. Paul Ramsey points out that this would be, in the United States, proportionate

to having 72,000 people murdered or abducted.²⁴ The terrorists argued that such acts were justified by the principle of military necessity. The argument goes like this: "We, a just and oppressed people, cannot possibly defeat the oppressive nation that overwhelms us with military superiority. The only way we can become free is to use military tactics that will force the oppressors to quit oppressing us. If that means killing a lot of people our oppressors call 'innocent,' then so be it."

I remarked above that few moralists wish to defend terrorist attacks, but we should not forget Cicero's famous remark that nothing is so foolish that some philosopher has not said it. Jean-Paul Sartre is that philosopher. Sartre defended the FLN terrorists in Algeria with typically eloquent prose: "To shoot down a European is to kill two birds with one stone, to destroy an oppressor and the man he oppresses at the same time: there remains a dead man and a free man."²⁵ In other words, every time a terrorist kills a European—any European at all—that terrorist kills an oppressor and creates a free person. The argument is so obviously nonsense, even if we grant the premise that every European is responsible for oppressing some Algerian, that it is hard to believe an intelligent person said it. As Walzer points out, this perfect master-slave correlative does not exist in the real world. Not every European is an oppressive master. Yet Sartre can approve of the FLN killing even children in the name of freedom without making the slightest case for how children could oppress anyone. This is despicable moral reasoning and Walzer is right to take Sartre to task for it.

Muslim terrorists are, perhaps, the most infamous terrorists of the last quarter century. Although the IRA has committed its recent share of unjust acts, Islamic fundamentalists have reached new heights of destruction with the suicide missions that leveled the World Trade Center and damaged the Pentagon. This is the time to point out that terrorist acts are a form of irregular warfare and some forms of irregular warfare are encompassed both within Western just war theory and Islamic notions of moral combat. Western just war theory has extended its boundaries to include irregular warriors; that is to say, irregular warfare is subjected to the just war criteria. Francis Lieber's work on the laws of war during the American Civil War is largely responsible for this

24. See PAUL RAMSEY, *THE JUST WAR: FORCE AND POLITICAL RESPONSIBILITY* 507 (1968).

25. Jean-Paul Sartre, *Introduction* to FRANK FANON, *THE WRETCHED OF THE EARTH* 22 (Constance Farrington trans., 1968).

move.²⁶ During the war, Confederate guerilla parties were considered irregular because they wore no clothing to indicate that they were soldiers. Lieber, however, argued that they should be treated as regular soldiers so long as they fought justly. In short, they had to follow the norms of the *jus in bello*. Classical Islam, according to El Fadl, made similar moves. The *Ahkam al-Bughat* comprises the rules that regulate the treatment of rebels. A number of important principles are derived by Sunni jurists from the *Ahkam al-Bughat*, the most notable being that, during the rebellion, "slaughtering of women, children and noncombatants was prohibited."²⁷

Modern Islamic terrorist organizations, unfortunately, are unconstrained by Classical Sunni prohibitions. Modern "irregular" warriors, such as the Hamas and those led by Osama bin Laden, view themselves as being in the same position as those Muslims who faced Christian crusaders in the Middle Ages. Like Saladin, these irregular warriors attempt, as John Kelsay puts it, "to rid themselves of the rule of non-Muslims and to recover a lost portion of the territory of Islam."²⁸ The purpose of this sort of jihad, therefore, is not expansion but recovery of what was unjustly taken or to be free from an oppressor.

Islamic terrorist groups do not limit themselves to Western injustice. This is why *The Neglected Duty*—the "testament" of Islamic Jihad (the Egyptian band which killed Anwar Sadat)—argues that any Muslim ruler who does not attempt to live by the traditional law is an apostate not fit to rule; he must be fought. The conduct of irregular warfare is not set by abstract principles. According to *The Neglected Duty*, the nature of the enemy dictates the kind of fighting that must be employed. Because the established unjust forces greatly outnumber the just "irregulars," there are almost no limits on how the war may be prosecuted. For example, there is no restriction on killing innocent enemy civilians. This should be avoided whenever possible, but Muslims cannot be held responsible for the indirect consequences of a "legitimate" attack on the enemy. As Kelsay points out, such "irregular" tactics "stretch the fragile fabric of religious and

26. See JAMES F. CHILDRESS, *MORAL RESPONSIBILITY IN CONFLICTS* 95–163 (1982) (providing an excellent account of Lieber's contributions to the laws of war).

27. Khaled Abou El Fadl, *Ahkam al-Bughat: Irregular Warfare and the Law of Rebellion in Islam*, in CROSS, CRESCENT AND SWORD: THE JUSTIFICATION AND LIMITATION OF WAR IN WESTERN AND ISLAMIC TRADITION 149, 166 (James Turner Johnson & John Kelsay eds., 1990).

28. JOHN KELSAY, *ISLAM AND WAR: THE GULF WAR AND BEYOND* 97 (1993).

moral traditions on the limitation of war so far that it breaks.”²⁹ This is clearly seen in the use of Saladin as an example of what Hamas and Islamic Jihad are doing. Saladin was famous for his scrupulous behavior toward enemy soldiers and civilians. In fact, Saladin behaved much better—observed the rules of war much more closely—than his famous Christian counterpart, Richard the Lionheart. The fit between past and present here is not only “not precise,” as Kelsay suggests, but actually nonexistent.

For Rawls and Walzer, of course, we cannot attack innocent people because that is a violation of their rights. Nevertheless, if Rawls and Walzer are right about supreme emergency, then those rights are not absolute. In other words, innocent people may still be attacked in war—directly and intentionally. On the principle of supreme emergency, a just nation may override the rights of the innocent civilians of an unjust nation. More to the point: terrorism may be justified on grounds of supreme emergency.

Islamic fundamentalists perceive the West—especially the United States—as evil because the United States oppresses Muslim people. The United States, in Muslim eyes, does this indirectly through its “unjust” support of Israel. The United States’ support is seen as unjust in the sense that the United States supports a homeland for Jews in the Middle East, a homeland that displaced a whole lot of Muslim people, and that the United States supports Israel’s anti-Palestinian policies. The United States also oppresses Muslims through its economic policies that favor Westerners at the expense of Third World and Islamic countries. The United States is too powerful to fight in a conventional manner. The only way to throw off this oppressor is to strike the oppressor in such a way that the oppressor will quit oppressing. Random acts of murder are the only effective means available. In the eyes of the terrorists, they are in a supreme emergency. Their entire civilization is at stake, and, as Walzer and Rawls admit, when an entire civilization is at stake, the innocent are legitimate targets.

We have three ways of rebutting the argument: deny that the terrorist’s civilization is in grave peril; deny that the West is the oppressor; or deny that the civilization is one worth preserving with immoral acts (as is the liberal West). The second and third are hardest to support. Islamic civilization is certainly a civilization worth preserving. Also, it is hard to deny that the West, and the United States in particular, has not exactly always played fair with Muslim nations. Of course, it is quite another matter to say

29. *Id.* at 107.

that the United States is so systematically oppressing Muslims that Islamic civilization is in peril, which is what the Islamic terrorists are in fact claiming. This brings us to the third possible rebuttal. We wish to claim that Islamic civilization is not being threatened gravely, either by the United States or any other Western power. But this is not enough, for who is to decide? To paraphrase MacIntyre: Whose supreme emergency? Which rationality? The point is this: if Islamic terrorists truly perceive the West to be such a grave threat to their way of life, then they may resort to killing innocent people in order to preserve their way of life. That is the logic of supreme emergency. Put another way, terrorism is nothing more than supreme emergency in action.

Classical just war doctrine brooks no deliberate, intentional killing of the innocent. Killing innocent people can never be virtuous, can never be sanctifying, and can never bring you closer to God. Too, classical Islamic laws governing combat behavior deny that such acts can lead the Muslim to paradise. Thus, on this point, classical Christian and classical Islamic accounts of morality in war are in complete agreement. Ironically enough, the subject of terrorist attacks, the very area of violence the West finds so deplorable, and the area that seems such a hurdle for Muslim participation in the international legal system, is an area of the common human experience: the moral distaste of killing innocent people. Both religious traditions have such a dislike for killing the innocent that both will never justify the killing of innocent people as the morally right thing to do.

The next question to deal with is exactly how to deal with terrorists: how can we strike back at targets who hide themselves among the innocent? Paul Ramsey, in the course of arguing about how we may fight guerilla fighters, claimed that when guerilla fighters hid and attacked among the innocent, they (the guerillas) and not the just fighters were responsible for the deaths of innocent people that would occur when the just attacked the guerillas. The principle of double-effect is what may allow for such a scenario. The two key points are whether the deaths of the innocent are a means to the goal, and if not, are the deaths worth the goal. Notice that there is no need to go to the second point if we cannot satisfy ourselves on the first. We can never kill the innocent as a means to killing the guilty. We may, of course, kill the innocent *per accidens*, as an unintentional byproduct of killing the enemy. In such a case the deaths of the innocent play no part in meeting the goals of the action. In the case of striking back at terrorist organizations, this would mean being able to find out where they are hiding. We cannot simply

use obliteration bombing tactics as we did in World War II. If we are reasonably sure that we know where they are hiding, then we may possibly target them, even if they are hiding out in an area populated by innocent civilians. In such a case, it is the terrorists who are targeted and not the civilians, and it is the terrorists who are to blame for the deaths of innocent people they hide among. But we still have to count the costs. How many civilians do we estimate will die as a result of our attack? Does the estimated number outweigh the good sought? Nowhere are the virtues more necessary in war than here. The ability to make such decisions requires a great deal of prudence (and mercy). We can only hope and pray that our political leaders, military commanders, and soldiers possess this sort of virtue; that is hoping and praying for a lot.

III. CONCLUSION

Warfare may be defined out of existence, but it can never be eliminated. Semantic victories purchase very little on a field of battle that will remain whether we call such actions "war-making" or "policing." Warfare will be a permanent part of the human condition until God puts an end to history. All wars are in some sense inhumane, because they cause suffering to those who do not deserve it. But not all wars are unjust; that is to say, not all wars debilitate human flourishing. Christian just war doctrine uses the *jus ad bellum* to distinguish just wars that allow us to flourish as human beings from unjust wars that prevent us from flourishing. Wars fought without proper authority, wars fought without a just cause, and wars fought without a good intention are unjust wars strictly speaking, for they are wars the prosecution of which debilitates virtue. Just wars are wars in which the failure to prosecute makes us unjust. Put differently, we fail to be all that we are intended by God to be as human beings when we refuse to fight just wars or when we fight unjustly. So, to be absolutely clear on this point: unjust acts in war are acts that prevent us from flourishing; they are acts that fail to display virtue and thus fail to make us more like what God intends us to be.

The battles fought in any war will issue in inhumane acts; for barring human perfection and a very remote battlefield, innocent people will suffer. But just warriors maintain that the very "inhumaneness" we are talking about here should come from unintentional acts only, and this points to our humanity. We do not flourish—we do not follow Christ—when we intentionally cause suffering to innocent people. Christian just warriors maintain that we do not have to act unjustly in order to fight wars

successfully, and it is a good sign that we should not be fighting a proposed war if the only way to win is to fight unjustly. Christian just war doctrine uses the *jus in bello* to help identify unjust acts in war that prevent human flourishing. It is unjust to resort to violence when we know that the evil we cause will outweigh the expected good. It is unjust intentionally to attack innocent people. But it is just to a very high degree to fight virtuously in a just war, for in fighting virtuously, soldiers are elevated by God through their virtuous acts. Human beings are made by the Holy Spirit (grace) more fit for beatitude with God when they fight just wars virtuously. In short, we flourish as human beings when we fight just wars justly. This is because all acts of charity, acts that proceed from a love of God, are acts that make us more like what God intends us to be. And nothing is more profitable for a human being than engaging in practices, whatever those practices may be, that make one more fit for beatitude with God. Terrorism can never be justified on Christian just war grounds. Christian just warriors choose death before dishonor. Terrorists and upholders of supreme emergency choose dishonor before death.

