Introduction

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I. THE JUST WAR TRADITION TODAY

In studying the history of the ethics of war, the just war tradition may be interpreted as a historically evolving body of tenets about just war principles. (See the appendix for an introduction to these principles.) Instead of a single just war theory, there have been many just war theories—for example, those of Augustine, Aquinas, Vitoria, and Grotius—theories that have various commonalities and differences. A comprehensive history of the evolving just war tradition should feature a thorough study of how these just war theories were rethought. For example, in his landmark work *Just and Unjust Wars*, written during the Cold War, Michael Walzer exclaimed: "Nuclear weapons explode the theory of just war."[1] In his rethinking of the just war tradition in light of the superpower practice of nuclear deterrence, he contributed his influential conception of supreme emergency exceptions. Now that the Cold War is over, the authors of the articles in this book are primarily concerned with the question of how the just war tradition—which is understood somewhat differently by the different authors—should be rethought today. Echoing Walzer's exclamation, among the particular post–Cold War questions that can be raised are these: Is just war theory exploded by terrorism? Is it annihilated by genocide? In their various rethinkings of the just war tradition, our authors state their own particular post–Cold War questions, and answer them from their diverse viewpoints.

In order to rethink the just war tradition cogently, it is important to answer the question: What is the place and standing of the

just war tradition today? Recently, in his provocatively titled article "The Triumph of Just War Theory (and the Dangers of Success)," Walzer wrote: "Perhaps naively, I am inclined to say that justice has become, in all Western countries, one of the tests that any proposed military strategy or tactic has to meet—only one of the tests and not the most important one, but this still gives just war theory a place and standing it never had before."[2] In light of moral controversy about the Iraq War, it cannot be said that all Western countries always concur about the justice or injustice of the use of armed force. Arguably, however, it can be said that just war theory has triumphed in most Western countries, insofar as just war principles are frequently presupposed in debates about the justice or injustice of the use of armed force.[3]

Even if just war theory has triumphed as a moral framework for debate in most Western countries, it still may be doubted whether it will eventually triumph in all countries. Presently, 192 countries are members of the United Nations. Two of the aims stated in the Preamble to the UN Charter are "to save succeeding generations from the scourge of war" and "to reaffirm faith in fundamental human rights." And a third aim is "to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest." With the aim of ensuring that armed force is used only in the common interest, should all 192 countries accept just war principles?

An answer to this question can be found in a recent report to the United Nations, which was commissioned by Secretary-General Kofi Annan, and released in December 2004—namely, the Report of the High-level Panel on Threats, Challenges and Change.[4] A purpose of the High-level Panel Report is to encourage a rethinking of the ideal of collective security in the UN Charter. In particular, the report proposes that whenever the Security Council deliberates about "whether to authorize or endorse the use of military force," it should utilize "five basic criteria of legitimacy":

(a) *Seriousness of threat*. Is the threatened harm to State or human security of a kind, and sufficiently clear and serious, to justify *prima facie* the use of military force? In the case of internal threats, does it involve genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law, actual or imminently apprehended?

(b) *Proper purpose*. Is it clear that the primary purpose of the proposed military action is to halt or avert the threat in question, whatever other purposes or motives may be involved?

(c) *Last resort*. Has every non-military option for meeting the threat in question been explored, with reasonable grounds for believing that other measures will not succeed?

(d) *Proportional means*. Are the scale, duration and intensity of the proposed military action the minimum necessary to meet the threat in question?

(e) *Balance of consequences*. Is there a reasonable chance of the military action being successful in meeting the threat in question, with the consequences of action not likely to be worse than the consequences of inaction?[5]

These five criteria of legitimacy resemble traditional just war principles. The criterion of seriousness of threat resembles the just war principle of just cause, the criterion of proper purpose resembles the just war principle of right intention, the criterion of last resort resembles the just war principle of last resort, and the two criteria of proportional means and balance of consequences together resemble the combined just war principles of proportionality and reasonable chance of success. In anticipation of the moral-relativist objection that just war principles embody Western ethical concepts, and must not be imposed on non-Western cultures, it should be recognized that the sixteen members of the High-level Panel are distinguished citizens of Australia, Brazil, China, Egypt, France, Ghana, India, Japan, Norway, Pakistan, Russia, Tanzania, Thailand, United Kingdom, the United States, and Uruguay.[6] If such criteria of legitimacy were accepted by a substantial majority of member states of the United Nations as principles governing Security Council deliberations about threats to or breaches of the peace, just war theory would indeed have triumphed globally as a moral framework for debate about the justice or injustice of wars.

In rethinking the just war tradition, it is important to rethink the just war principles individually. Using the wording of the five criteria of legitimacy, some examples of questions that can be raised about individual just war principles are as follows. Is genocide (or other large-scale killing or ethnic cleansing or a serious violation of international humanitarian law) a just cause for the use of military force? If the primary purpose of a proposed military action is to halt or avert genocide, may a secondary purpose be regime change? If all nonmilitary options

for meeting a future threat have to be explored, with reasonable grounds for believing that they will not succeed, can a preventive war ever be a last resort? Note that these questions also indicate that the five criteria of legitimacy need to be rethought. For instance, recognizing that those criteria do not implicitly contain anything like the just war principle of legitimate authority (presumably because the UN Charter makes the Security Council the supreme authority), we can ask: to satisfy that principle, must a war be authorized by the Security Council? Of course, these questions are only intended to be representative. The authors of the articles in this book rethink the just war tradition in their own terms.

Although a comprehensive survey of questions germane to the project of rethinking the just war tradition is beyond the scope of this introduction, it is worthwhile to mention several additional examples. What is the ethical import of new military technologies (e.g., robot aircraft)? For instance, is it morally permissible to develop bunker-busting precision-guided nuclear weapons? What moral issues are raised specifically by asymmetrical warfare? When terrorists hide among civilian populations, whom or what may counterterrorists target? What moral limits should be placed on the interrogation of captured terrorists? Are the actions of private military contractors (e.g., private security forces) also subject to just war principles? For the sake of deterring an attack with chemical or biological weapons, is it morally permissible to threaten nuclear retaliation? When armed humanitarian intervention has resulted in considerable civilian casualties in a target state, is there a moral obligation of restitution?

In light of these examples, it should be clear that, even if the five criteria of legitimacy were accepted by a substantial majority of UN member states, they would still need to be rethought. Unfortunately, to evidence why they might not be accepted, some recent events have to be recounted.[7] In support of the goal of reforming the United Nations in a summit meeting of "the largest assemblage of world leaders ever brought together in a single location"[8]—the 2005 World Summit— Kofi Annan made his own report (21 March 2005) to the General Assembly.[9] In particular, drawing upon the High-level Panel Report, he summarized the five criteria of legitimacy, and recommended "that the Security Council adopt a resolution setting out these principles and expressing its intention to be guided by them when deciding whether to authorize or mandate the use of force."[10] Responding to this Report of the Secretary-General, an "Outcome Document"—dated 15

September 2005—for the 2005 World Summit was adopted by "Heads of State and Government."

In an earlier draft of the Outcome Document—dated 10 August 2005—there are significant, albeit truncated, references to the five criteria of legitimacy:

> 55. We also reaffirm that the provisions of the Charter regarding the use of force are sufficient to address the full range of security threats and agree that the use of force should be considered an instrument of last resort. We further reaffirm the authority of the Security Council to take action to maintain and restore international peace and security, in accordance with the provisions of the Charter.
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> 56. We recognize the need to continue discussing principles for the use of force, including those identified by the Secretary-General.[11]

This draft of the Outcome Document expressed a "delicately balanced agreement" among member states of the United Nations about a variety of contentious issues (e.g., the Millennium Development Goals).[12] However, extreme pressure exerted by some member states (notably, the United States) "blew apart the hard-won compromise."[13] As a consequence, these two paragraphs were removed from the draft Outcome Document. Concerning the five criteria of legitimacy—and even the principle that the use of force should be an instrument of last resort—the Outcome Document adopted by world leaders is silent.[14]

In conclusion, the High-level Panel Report demonstrates that the just war tradition is part of global political culture, but the 2005 World Summit demonstrates that the tradition has not yet been realized sufficiently in practice. It is our belief that academics can contribute to the acceptance and efficacy of the just war tradition today by engaging in the project of rethinking it.

II. OVERVIEW

The authors of the twelve chapters in this book raise their own particular questions about the just war tradition, and answer them from their own diverse viewpoints. Is there a single frame of reference by which their various questions should be organized? In the just war tradition, such a query might be answered through a typology of interstate wars (i.e., wars of conquest, border wars, and so forth). However, to rethink

the tradition sufficiently, there is need to reevaluate any answer of this sort. Indeed, even though the Cold War has ended, the threat of interstate wars remains. But other threats to the security of states have emerged. In the High-level Panel Report, a broad range of threats to international security is scrutinized, under the rubrics of poverty, infectious disease, environmental degradation, conflict between states, conflict within states, weapons of mass destruction, terrorism, and transnational organized crime. These rubrics comprise, we submit, a thought-provoking frame of reference by which questions about the just war tradition—not only questions raised by our authors but also questions raised by other authors—can be fruitfully organized. The project of rethinking just war theory is interrelated with the project of rethinking the theory of international security.

Moral questions about the use of armed force can be organized in terms of this frame of reference. For each type of security threat, we may ask: how might armed force be used to counter the threat? And then, in response to each answer, we may ask: how might that use of armed force be assessed by means of just war principles? Such questions about the threat of conflict between states are standard in the just war tradition. And such questions about conflicts within states arise familiarly while investigating how just war principles might pertain to armed humanitarian interventions. Concerning the threat of terrorism, a ladder of kinds of armed force might seem appropriate, from targeted assassination to military invasion, thereby provoking a correlative ladder of moral questions. Moral questions about the use of weapons of mass destruction were raised during the Cold War, especially questions about nuclear deterrence; but other questions are featured more today, especially questions about the preemptive or preventive use of armed force to counter the threat of weapons of mass destruction. In accordance with the last resort principle, we should also ask, concerning each type of security threat: how might the threat be countered by nonmilitary measures? And then, in response to each answer, we may ask: how might that nonmilitary measure be morally assessed? Such questions about nonmilitary measures are customarily raised about the threats of transnational organized crime, poverty, infectious disease, and environmental degradation. Nevertheless, sometimes threats of these four types might have to be countered by the use of armed force. For, as the High-level Panel Report asserts, "Today, more than ever before, threats are interrelated."[15] Consider, for instance, the threats interwoven in the following hypothetical scenario: worldwide infec-

tious disease resulting from a bioweapon purchased from a transnational criminal organization by a terrorist group. Some examples of moral questions about threats of these four types are as follows. May armed force be used to assassinate a criminal chief, to protect humanitarian relief workers, to implement a quarantine, or to stop poachers from killing animals on the verge of extinction (e.g., the mountain gorillas of Rwanda)?

The chapters in this book are distributed in three parts: "Theory," "Noncombatants and Combatants," and "Intervention and Law." The first chapter is pertinent to the threat of environmental degradation: Mark Woods's "The Nature of War and Peace: Just War Thinking, Environmental Ethics, and Environmental Justice." The harm war does to the environment and the inadequate protections in place to prevent that harm are recounted, as well as prior work about how the disparate goals of war and environmental endeavor might be reconciled. An environmental ethics of war and peace is introduced, which demands that *jus ad bellum*, *in bello*, and *post bellum* pay significant regard to environmental considerations. In order to be comprehensive, it is advocated that new just war criteria be developed that would govern preparations for war (including training and testing): *jus potentia ad bellum*.

The second chapter is concerned primarily with the threat of conflict between states, but it is also relevant to the threat of conflict within states: Eric Patterson's "*Jus Post Bellum* and International Conflict: Order, Justice, and Reconciliation." Patterson contends that *jus post bellum* is a neglected part of just war theory and offers pragmatic and moral reasons for including it. In striving for the just cessation of a war, there should be three successive goals. The minimal just peace is achieved with the attainment of order, which is defined as a condition of security between states. Better than mere order, though, is the combination of order with justice (holding the guilty responsible). The best, but most elusive, ending to a war adds conditions of order and justice to a conciliation (or reconciliation) between peoples. States should aim for the highest reasonable goal to guide terms of justice at war's end.

The third chapter focuses on the threat of conflict between states, but it has relevance to the threats of terrorism and weapons of mass destruction. Since the Soviet Union's collapse, the United States has tried to cement its position as military hegemon by investing heavily in military technology. In "Just War Theory and U.S. Military Hegemony," Harry van der Linden explores the moral repercussions of

our unipolar military world, which seems unanticipated by thinkers from the just war tradition. If weaker countries are precluded (by the *jus ad bellum* principles of reasonable chance of success and proportionality) from declaring (an otherwise just) war against the U.S., does the tradition unfairly favor the hegemon? This question is answered affirmatively, and a new direction for the tradition is advocated that takes into account that hegemonic military force contributes to terrorism and the proliferation of weapons of mass destruction. Van der Linden concludes that as long as the United States seeks to sustain its status as hegemon, the bar for just resort to war is raised considerably.

The fourth chapter is concerned primarily with the threats of conflict between states, conflict within states, and terrorism; but it has relevance for the other types of security threats. In "Generalizing and Temporalizing Just War Principles: Illustrated by the Principle of Just Cause," John W. Lango proposes that just war principles should be generalized and temporalized, so that they are applicable to military actions of every sort (e.g., military actions in UN peacekeeping operations). He suggests that, when the principles are appropriately revised, so as to be applicable to every form of armed conflict—not only wars but also forms of armed conflict that are not wars—they should be renamed "just armed-conflict principles." To illustrate the proposal, he discusses especially the just cause principle.

The fifth chapter (which begins the second part of the book, "Noncombatants and Combatants") concentrates primarily on the threats of conflict between states and terrorism. In "Just War Theory and Killing the Innocent," Frederik Kaufman explores the morality of killing civilians, finding that the acceptance among just war theorists of unintentional civilian deaths in the pursuit of military objectives means that noncombatants' rights can be infringed (resulting in justifiable, though regrettable, deaths) without being violated. He then applies this finding to the idea of supreme emergency and argues that Walzer mistakenly views the idea as a concession to utilitarianism and a move away from the constraints of rights. The chapter ends with a challenge: is there any reason that exempting *jus in bello* norms for the sake of averting catastrophe would not be equally justified when pursuing a very great good?

The sixth chapter is concerned primarily with the threats of conflict between states, conflict within states, and terrorism. Many contemporary forms of armed conflict—for example, ones involving suicide bombers dressed like civilians, irregular forces, and belligerent

populaces—show the problematized state of the distinction between combatants and noncombatants. Pauline Kaurin considers this issue in "When Less Is *Not* More: Expanding the Combatant/Noncombatant Distinction" and calls for an amplification of the traditional combatant/noncombatant distinction that not only assesses the parties to a conflict more precisely, but also provides a commonsense guide for soldiers on the ground. Within a theater of operations, troops can initially identify those they encounter with the help of two categories of noncombatant and three categories of combatant; as the troops discover more about the strangers, they can continually update their categorizations and continue to treat them (with special attention to battlefield context) in accordance with their level within the multipart distinction.

The seventh chapter focuses primarily on the threat of conflict within states. In "Just War Theory and Child Soldiers," Reuben Brigety and Rachel Stohl encounter a different challenge to the just war tradition's standard principle of discrimination. They argue that a combination of causes (including the availability of guns and some groups' requirement for more troops) have given rise to a class of soldiers who are also children. Deciding whether to categorize the child soldier as a combatant or a noncombatant is a conundrum, because a soldier is generally considered a combatant (and, therefore, targetable), whereas a child is usually considered a noncombatant (and, therefore, protected). In the end, it is allowed that child soldiers may be justly targeted, but only when the considerations of self-defense and proportionality are accounted for sufficiently.

The eighth chapter is relevant primarily to the threats of conflict between states, conflict within states, and terrorism. Michael W. Brough's "Dehumanization of the Enemy and the Moral Equality of Soldiers" seeks to make a statement about the entire class of combatants: that they ought not to be dehumanized by their enemies. Three basic reasons are given: First, dehumanizing the enemy risks wartime atrocities, which are both morally repugnant and (often) strategically injurious. Second, a policy of dehumanization endangers a state's own soldiers, since good evidence indicates that soldiers' post-combat psychological well-being depends to some degree on respecting, rather than reviling, the enemy. Third, dehumanization propagates a perspective of the enemy that is not only practically and morally harmful, but also inaccurate: wartime foes generally have a great deal in common and should at least recognize each other's common humanity.

The ninth chapter (which begins the third part of the book, "Intervention and Law") is concerned primarily with the threats of conflict between states and terrorism: Whitley R. P. Kaufman's "Rethinking the Ban on Assassination: Just War Principles in the Age of Terror." In doing so, Kaufman considers recent appeals to assassination, which he characterizes as largely consequentialist and, therefore, incompatible with the just war tradition. But he also takes up the question of what makes a person a combatant. His answer, that combatancy is a function of the direct threat one poses to other combatants, directs him to assign most political leaders to the ranks of noncombatants. He tenders other reasons to consider a policy of assassination immoral and inadvisable, but finally admits that the just war tradition could justify particular assassinations.

The tenth chapter is pertinent to the threats of conflict between states and weapons of mass destruction. Jordy Rocheleau's "Preventive War and Lawful Constraints on the Use of Force: An Argument Against International Vigilantism" stakes out a position that compares unilateral preventive war to vigilante justice: like vigilantes, individual states in pursuit of punitive actions are bound to be biased, and they threaten to undermine the rule of international law. Only preventive wars endorsed by the international community in response to illegal possession or development of weapons of mass destruction are justified. These wars must also satisfy such *jus ad bellum* principles as last resort and proportionality. Rocheleau concludes with the claim that international vigilantism may not be exonerated as a form of civil disobedience.

The eleventh chapter is concerned primarily with the threat of conflict between states. Legitimate (or right) authority has often been listed in the just war tradition's *jus ad bellum* principles, but the criterion has encountered trouble in recent years, causing many to ask what, exactly, is its measure. In "Faith, Force, or Fellowship: The Future of Right Authority," Hartley Spatt traces the history of right authority from its origins, when it was bequeathed by religious faith, through a middle period, when right authority is seized by those who can punish dissent. Spatt offers what he considers a better grounding for right authority: a nonhierarchical ethical commonwealth that is inadequately embodied by the United Nations.

The twelfth and last chapter focuses primarily on the threat of conflict within states. Robert W. Hoag's "Violent Civil Disobedience: Defending Human Rights, Rethinking Just War" considers how current international law limits armed interventions to prevent state vio-

lations of basic human rights. Employing a "domestic analogy" with civil disobedience, he argues that preventing such violations may require military actions that although illegal could serve as a means of reforming current international law. A *jus ad bellum* assessment of such interventions involves considering both the immediate humanitarian aspects and the eventual contribution to improving international law's defense of basic human rights. His assessment of legal reform through armed humanitarian interventions calls upon recently neglected aspects of the just war tradition's attention to principles of right authority, long-term purposes or intentions, and just cause beyond state self-defense.

It is our hope that the chapters in this volume will challenge readers to rethink the just war tradition as scholars, as thinkers, as practitioners, and as citizens. Through reasoned debate and the airing of ideas, we might come closer to solving some of the difficult issues of our times. And there are few issues more worth solving than those that arise in this book.

NOTES

1. New York: Basic Books, 1977, 282.

2. Michael Walzer, *Arguing About War* (New Haven: Yale University Press, 2004), 12. As his words "perhaps naively" indicate, his recent views about just war theory are not fully stated in this quotation.

3. One example is Gareth Evans and Mohamed Sahnoun, "The Responsibility to Protect," *Foreign Affairs* 81:6 (November/December 2002): 99–110. Also, in the academic journal of the U.S. Army War College, there is an article that criticizes the Iraq War in terms of just war principles: Franklin Eric Wester, "Preemption and Just War: Considering the Case of Iraq," *Parameters: US Army War College Quarterly* 34 (2004–05): 4–20. Available at http://carlisle-www.army.mil/usawc/Parameters/04winter/wester.htm.

4. *A More Secure World: Our Shared Responsibility*, Report of the High-level Panel on Threats, Challenges and Change (New York: United Nations, 2004), par. 25. Available as a book or at http://www. un.org/secureworld.

5. Ibid., par. 207.

6. The members of the panel are as follows: Anand Panyarachun (chairman), former prime minister of Thailand; Robert Badinter (France), member of the French Senate and former minister of justice of France; Joao Clemente Baena Soares (Brazil), former secretary-general of the Organization of American States; Gro Harlem Brundtland (Norway), former prime minister of Norway and former director-general of the World Health Organization;

Mary Chinery-Hesse (Ghana), vice-chairman, National Development Planning Commission of Ghana and former deputy director-general, International Labour Organization; Gareth Evans (Australia), president of the International Crisis Group and former minister for foreign affairs of Australia; David Hannay (United Kingdom), former permanent representative of the United Kingdom to the United Nations and United Kingdom special envoy to Cyprus; Enrique Iglesias (Uruguay), president of the Inter-American Development Bank; Amre Moussa (Egypt), secretary-general of the League of Arab States; Satish Nambiar (India), former lieutenant general in the Indian Army and Force Commander of UNPROFOR; Sadako Ogata (Japan), former United Nations high commissioner for refugees; Yevgenii Primakov (Russia), former prime minister of the Russian Federation; Qian Qichen (China), former vice prime minister and minister for foreign affairs of the People's Republic of China; Nafis Sadik (Pakistan), former executive director of the United Nations Population Fund; Salim Ahmed Salim (United Republic of Tanzania), former secretary-general of the Organization of African Unity; and Brent Scowcroft (United States), former lieutenant general in the United States Air Force and United States National Security Adviser. These brief biographies were obtained from http://www.un-globalsecurity.org/panel.asp.

7. An abridgement of this paragraph and the next paragraph is contained in an article by one of the editors of this book: John W. Lango, "The Just War Principle of Last Resort: The Question of Reasonableness Standards," *Asteriskos: Journal of International and Peace Studies* 1:1–2 (2006): 7–23.

8. "The Lost U.N. Summit Meeting," editorial, *New York Times*, 14 September 2005.

9. Report of the Secretary-General, *In Larger Freedom: Towards Development, Security, and Human Rights for All* (21 March 2005). Available at http: //www.un.org/largerfreedom.

10. Ibid., par. 126 (boldface removed).

11. "Revised draft outcome document of the high-level plenary meeting of the General Assembly of September 2005 submitted by the President of the General Assembly" (10 August 2005), A/59/HLPM/CRP.1/Rev.2. Various drafts of and sets of proposed amendments to the Outcome Document—including those cited in this introduction—are available at the website of the Global Policy Forum: http://globalpolicy.igc.org/msummit/millenni/m5outcomedocindex.htm.

12. Peter H. Gantz and Michelle Brown, "The UN Summit: U.S. Spoiler Role Weakens Draft Outcome Document," Refugees International (09/14/2005), 1. Available at http://www.refugeesinternational.org/content/article/detail/6777.

13. Ibid., 1. See also "The Lost U.N. Summit Meeting."

14. United Nations General Assembly, 2005 World Summit Outcome (15 September 2005), A/60/L.1. It would be a mistake to assume that the

United States alone was responsible for the removal of these paragraphs. Indeed, the reference to the last resort criterion in paragraph 55 and the entirety of paragraph 56 are missing in the document called (at the Global Policy Forum website) "US Amendments to the Revised Draft Outcome Document from August 10th (August 25, 2005)." But paragraph 56 also is rejected in the document entitled "Proposed Amendments by the Non-Aligned Movement to the Draft Outcome Document of the High-level Plenary Meeting of the General Assembly (A/59/HLPM/CRP.1/Rev.2)."

    15. *A More Secure World*, par. 17.