

# Heritage Lectures

No. 1081

Delivered December 13, 2007



Published by The Heritage Foundation

May 12, 2008

## Just War and Endgame Objectives in Iraq

*Joseph Capizzi, Ph.D., and Kim R. Holmes, Ph.D.*

**RYAN MESSMORE:** For over fifteen hundred years, just war theory has provided a moral framework for thinking about and conducting war. Today it is often understood as a list of seven criteria, including principles such as just cause, probability of success, and the use of minimum force. These criteria are sometimes perceived as providing an up-or-down determination of whether and how particular wars should be engaged.

But does this checklist approach do adequate service to traditional just war theory? What if this tradition of thought were meant to do more than simply grant moral permission for certain wars? What if it were meant to help nations to think a certain way about what war actually is and what kinds of goals and goods it should serve?

If so, this would be important for the situation now facing the United States in Iraq. Such an understanding would extend the relevance of just war thinking from deciding to enter war in the first place to analyzing exit strategies as well.

Dr. Joseph Capizzi will help draw some of these connections for us today by explaining what just war theory is about and how it might assist us in analyzing endgame objectives in Iraq.

Dr. Joseph Capizzi is Associate Professor of Moral Theology at the Catholic University of America and Fellow at the Culture of Life Foundation. He received his B.A. from the University of Virginia, a master's in Theological Studies from Emory University, and a sec-

### Talking Points

- The just war theory connects the use of military force to politics, reminding statesmen that war and politics serve the same goals—namely, justice, order, and peace.
- Every activity within war must be scrutinized for its capacity to create a more just reorganization of power. Robust analysis should attend not only to questions about whether war is justified, but also to broader political questions about the dynamics that lead to war and strategies for achieving peace.
- The “benchmarks for success” are a means of following the just war theory’s lead in aligning political and military goals. The benchmarks require qualitative interpretation within the broader context of politics rather than a simplistic quantitative assessment as on a math test.
- In Iraq, the goal required by prudent politics requires a stabilizing force (the U.S. military) that can work toward establishing the necessary conditions of a better reorganization of power. To use the benchmarks to leverage U.S. forces out of Iraq prior to the attainment of such goals would run counter to the ends necessary to peace.

This paper, in its entirety, can be found at:  
[www.heritage.org/Research/Thought/hl1081.cfm](http://www.heritage.org/Research/Thought/hl1081.cfm)

Produced by the Richard and Helen DeVos  
Center for Religion and Civil Society

Published by The Heritage Foundation  
214 Massachusetts Avenue, NE  
Washington, DC 20002-4999  
(202) 546-4400 • [heritage.org](http://heritage.org)

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

ond master's and a Ph.D. in Theology from the University of Notre Dame. In 2002 he was appointed to the Cardinal's Chair at the Intercultural Forum for Studies in Faith and Reason at the John Paul II Cultural Center here in Washington. Most impressively, he is a husband and father to four girls.

—Ryan Messmore is the William E. Simon Fellow in Religion and a Free Society in the Richard and Helen DeVos Center for Religion and Civil Society

**JOSEPH CAPIZZI:** Before any shots were fired in Iraq or Afghanistan, right political thinking required aligning the causes of the conflict with the goals war sought to attain. Both the causes of war and the goals it seeks are required to think rightly about the decision to go to war. For centuries, just war theory taught statesmen the importance of aligning causes to goals, and we're being reminded daily of the relationship of cause and goal in Iraq.

The just war theory is a politico-moral doctrine governing the responsible use of armed force.<sup>1</sup> As a politico-moral doctrine, the just war theory connects politics and the use of military force. It implies a continuity of movement in the political uses of power, from power without military force all the way to power joined to military force and back again.

Whatever the cause, wars always seek to reorganize or preserve some current unstable or threatened organization of power. Decisions to go to war, then, always entail commitments to a more just and ordered reorganization of the political system. In other words, decisions for war result from the judgment that the current organization of international power must be changed (or preserved against threat) and that war is an apt instrument for that change.

The criteria of the just war theory place all this before the statesman: the justifying rationale for war, the vision of the subsequent reorganization of power, and the conduct appropriate to achieving that vision. For the just war theory is an instrument for the civilizing of power—an instrument, in other

words, that reminds statesmen that war serves political goals, and as such remains bound by the same basic means as politics generally. The decision to go to war, to turn to this particular means of the pursuit of political goals, ought always to have in mind those political goals shaping the conduct of war and helping to determine the conditions or, in the language of the day, “benchmarks” of success.

Since just war theory emerges as a means of civilizing power, war then pursues the same goods as politics does generally. These goods typically are understood by the just war tradition under the heading of “peace,” and within the theory are designated by the *ius ad bellum* (law of going to war) criterion of “right” or “just” intention. As with all political acts, war aims for peace, understood as a particular organization of power.<sup>2</sup> This claim that war serves or aims at peace trips up many people, who regard it as either disingenuous or paradoxical. War cannot possibly aim at peace, they believe. By its nature, they claim, war opposes peace. The height of dishonesty consists, they believe, in claiming war might serve peace. History and reason counsel otherwise.

History shows instead that the judicious use of war has righted wrongs, has defended against aggression, has spread freedom, and by reorganizing power has created the conditions for a better (if imperfect) peace than existed before war. In other words, wars like those against Germany, Japan, and Communist forces in Latin America and Asia have attained the political goals aimed at by statesmen. Such wars have conducted to the creation of a better peace—peace understood as a balance of political order and justice within which people can pursue their individual goods.

In addition, history shows as well precisely the kind of civilizing of power that just war theory requires and enables. History shows the effectiveness of just war theory in restraining war's aims within political bounds. One of the great misjudgments of the 20th century was the notion, shared

1. Paul Ramsey, “The Uses of Power,” in Ramsey, *The Just War: Force and Political Responsibility* (New York: Scribner's, 1968 and Lanham, Md.: University Press of America, 1983), pp. 3–18.
2. Theodore R. Weber, “Vengeance Denied, Politics Affirmed: Applying the Criterion of *Just Intention*,” *Societas Ethica Jahresbericht*. 2000, p. 173.

by many in politics and religion, that technology and democracy had totalized war beyond usefulness—technology because of the devastating capabilities of modern weapons, and democracy because democracies make all citizens responsible for their nations' wars. This misjudgment animated claims that war could never again be a useful instrument of politics; that all wars were bad wars because all wars must be total wars. Few claims have proven more utterly false more quickly than claims such as these. We see this in at least two ways: first by simple observation of the trend in wars since the beginning of the 20th century. One of the fascinating phenomena of the two Gulf wars and of the intervention in Kosovo and the war in Afghanistan was the universal concern about military targeting or what just war theory calls discrimination between legitimate and illegitimate targets of attack. Discrimination has become a virtually unquestioned assumption of American and NATO war tactics, built into its strategy and its weapons development. The contrast between concern for military targets in recent wars and the wars of the early 20th century utterly invalidates the claim that modern wars are total wars.

A second bit of evidence in favor of civilizing war comes from a comparison of just war theory to its alternative. Simply, the alternative to viewing war as serving political ends is to believe war a means of serving objectives beyond politics. Allowing war to be separated from political objectives is a disaster, as political goals alone are the means by which war is restrained. All non-political uses of war are unjust, as their justifications are inscrutable and their means without restraint. Non-political goals (call them religious or ideological) admit of no distinctions between combatant and noncombatant, or even friend and foe. Anything and anyone can be sacrificed to these ultimate goods. The West saw this in its wars against Nazism and Communism, and we're seeing it again today against an enemy that sacrifices its own and other people's children to purposes it takes to surpass political ones.

Moreover, the assertion that war be placed in the service of political objectives requires that the course of war be continually reassessed with reference to the political goals with which it began. If war indeed be required by a politics of peace, then every activity within war must be scrutinized by its capacity for creating peace. As an example, this will involve critical attention to the role of forgiveness and reconciliation in politics, much as Hannah Arendt suggested in *The Human Condition*.<sup>3</sup> More attention to setting up the conditions for post-bellum peace in Iraq might have helped avert many of the problems associated with a de-Baathification program that quickly converted from reconciliation into vengeance-seeking. Robust analysis should attend not only to questions about whether war is justified, but also to broader political questions about the dynamics that lead to war and strategies for reducing war.

The application of just war principles, then, must draw from a wider scope of political engagement than the most recent event or it will fail to offer guidance in pursuit of the goals of a genuine and effective politics. Too often the just war theory is treated as a crisis "ethic" that emerges only after some international catastrophe. This places war outside the operation of politics and thus also beyond the reach of morality.

The just war ethic, then, keeps war within the service of the political goals of justice and order. Justice and order are the ends of all politics. Just wars will be those wars that are limited by and attentive to these goals. Military aims and goals will constantly be aligned with the precipitating causes of the war and with changed political realities. The contending parties will also be required to conceptualize and work toward the post-bellum reorganization of power. The post-bellum reorganization of power will thus chasten and control the military execution of war.

In Iraq, the utter absence of peace (a balance between justice and order) became the basis for the just cause against it. We knew this already in 1991

---

3. "The discoverer of the role of forgiveness in the realm of human affairs was Jesus of Nazareth. The fact that he made this discovery in a religious context and articulated it in religious language is no reason to take it any less seriously in a strictly secular sense." Hannah Arendt, *The Human Condition*, second edition (Chicago: University of Chicago Press, 1998), p. 238.

when an alliance of nations repelled Iraq's invasion of Kuwait, but we knew then as well that merely repelling Iraq from Kuwait was not a sufficient reorganization of power in the region. Astute statesmanship knew, in other words, that politics would require more than we achieved.<sup>4</sup> That war's exit strategy, informed by the Powell Doctrine, involved achieving a very discrete aim—the removal of Iraq from Kuwait—followed up by the immediate and total removal of the American military from Iraq. It restored the region's organization of power to one that prevailed prior to Iraq's invasion of Kuwait—a good end, certainly—but chose not to address the major cause of the region's instability. One wonders whether that strategy contributed to the need to reintroduce the American military 10 years later.

In the public and in our politics, isolationism, war fatigue, discouraging reports in the press, and other factors converged to pressure the American government to form an immediate “exit strategy” from the current war in Iraq. In September, the media and many in Congress placed a great deal of emphasis on the apparent failure of the Iraqi government to meet more than nine of 18 “benchmarks” measuring the progress of the Iraqi government. But the benchmarks must be understood as merely a means of measuring political and military success in Iraq. That is, they are a means of following the just war theory's lead in aligning political and military goals. In a sense, something like the benchmarks is an apt and necessary reflection on the achievement and alignment of military and political goals; in another and more important sense, however, we should not confuse the means of doing so with the ends of attaining those goals. It's clear that many understand the benchmarks as a way to leverage the U.S. out of Iraq. The just war theory suggests that using benchmarks this way would be a politico-moral disaster.

The decision to go to war in Iraq and to reorganize power by removing and replacing Saddam Hussein's regime committed us morally and politically to a more just and stable organization of power than existed in Iraq under Saddam. Once the cause

involved “regime change,” mere removal of Saddam was not enough politically and morally. To use the benchmarks to leverage U.S. forces out of Iraq prior to the attainment of our political goals would run counter to the ends necessary to peace. Rigidly following the benchmarks (for instance, on the distribution of “hydrocarbon resources”) is not a sufficient political reflection on the conditions of a more peaceful reorganization of power. To remove our forces before establishing the necessary conditions of a better reorganization of power would be to remove a stabilizing force (the U.S. military) necessary to the achievement of a goal required by prudent politics. Whatever one thought of the initial move into Iraq, just war theory counsels now that peace would be undermined by premature departure from Iraq.

The Bush Administration has rightly resisted that pressure. When in October of the past year President Bush refused to commit to consequences of missing benchmark targets, he was engaging then in the kind of political thinking suggested by the just war theory.<sup>5</sup> By our entry into Iraq and the subsequent removal of Saddam, we wed our national interests—our political good—to the Iraqi people and the stabilization of their political order. The cause of war in Iraq, the replacement of a dictator by another regime, requires the creation of conditions permitting a relatively stable political order. There is no way of getting around the lengthy military commitment that involves. Saying this is not to wave away legitimate concerns about the progress of Iraq's government, or the attainment of military goals, or the human and economic costs of the war, but simply to remind us—as the just war theory does—that the achievement of political order and justice is an exercise in prudential judgment and is not reducible to quantitative assessment of goals set by our legislature. The benchmarks require interpretation within the broader context of politics. Were this a math test, certainly failure to meet more than nine of 18 goals would be a failing mark; but as an exercise in the political reorganization of power and judging the current policy of remaining in Iraq

4. Which was evident to all at the time; thus, the U.S.'s encouragement of Kurdish and Shiite insurgents to rise up and overthrow Saddam, and thus as well the subsequent creation and enforcement of “no-fly” zones in southern and northern Iraq.

5. Cf. Thomas Ricks, “Bush's Proposal of ‘Benchmarks’ for Iraq Sounds Familiar,” *The Washington Post*, October 26, 2006.

and increasing internal security against its alternative—summary withdrawal—the current course has much to recommend it. Indeed, since September, when calls for withdrawal may have been at their loudest, nearly all the trends in Iraq have been positive; even if we must grant that as trends they remain unstable.

The calls for withdrawal we've heard since 2003 are symptomatic of political thinking tempted to regard military conflict as always at odds with peace, but let's be clear about what the just war theory suggests: To withdraw American troops now is to commit other young American men and women at some point in the near future. The just war theory reminds us that peace is a principle of order, and order in international politics is the result of the organization of power. Therefore, peace itself depends on responsible politics. Aside from our clear moral obligations to Iraqi citizens, their political goals and ours do not currently permit us to withdraw. The current reorganization of power does not yet permit us to conclude we have as yet achieved something more stable than what we replaced. More just, yes, but more stable, no. Since the surge, conditions in Iraq have been moving in the direction of a more just order, but despite the claims of its advocates, withdrawal is not a movement toward peace but toward more war and violence now and in the foreseeable future.

**MR. MESSMORE:** We are pleased to have one of the foremost foreign policy experts in Washington here to offer remarks in response to Dr. Capizzi's presentation.

Dr. Kim Holmes serves as Vice President of Foreign and Defense Policy Studies at The Heritage Foundation as well as Director of our Kathryn and Shelby Cullom Davis Institute for International Studies. He is the editor of one of our flagship publications, the *Index of Economic Freedom*. Shortly after the September 11 attacks, he interrupted his time here as Vice President to accept President Bush's nomination to be the Assistant Secretary of State for International Organization Affairs. He was confirmed by the Senate in November 2002, and served for almost three years. At the State Department, Dr. Holmes directed diplomatic efforts to protect U.S.

interests and promote U.S. policy in multilateral forums, particularly the effort to get the United Nations to support the new government in Iraq and to address terrorism and the proliferation of weapons of mass destruction, as well as peacekeeping. He is a member of the Council on Foreign Relations and a former member of its Washington Advisory Committee. He has served as a member of the Defense Department's Defense Policy Board, on the Executive Committee and Board of Directors of the Center for International Private Enterprise, and as a public member of the U.S. delegation to the Organization on Security and Cooperation in Europe.

**KIM R. HOLMES:** Thank you, Professor Capizzi, for your very well-reasoned lecture. I find particularly admirable the appreciation you have shown for the original intent and history of the just war doctrine, for its nuances and complexity, and also for its real-world application to the war in Iraq.

What I'd like to do is offer some observations from a perspective I gained while working at the State Department—mainly on United Nations issues—to address this question of whether or not the Iraq War was truly one of “last resort,” and thereby meeting one criterion of the just war concept, and whether it is appropriate to build an international consensus test, or as the Vatican lawyers contended at the beginning of the Iraq War, that the support of the United Nations was necessary to make the war “just.”

Let me address this question first. Pope John Paul II and Archbishop Rowan Williams of the Anglican Church judged that the Iraq War did not conform to just war theory for two different reasons: the Vatican, if you read the lawyers' statements, mainly because it was not sanctioned by the U.N.; and the Archbishop, because it did not adequately meet the “good end” test in terms of what came afterwards—in the period of instability caused by the insurgency.

Now, as best as I can determine—and forgive me, I'm not a theologian or a moral philosopher or even a student of the just war theory like Professor Capizzi—the Vatican's determination arose from an interpretation over time of the just war theory's condition that those who make the decision to go to

war must possess “the prudential judgment” for “the common good.” At the beginning of the war, Cardinal Pio Laghi, the former Apostolic Nuncio to the U.S. who met with President Bush, argued that the war “is not just unless it gets back to the United Nations.... We have always insisted on the framework of the United Nations. [Without that], I would say it’s (the war, the intervention) illegal, unjust.”

I assume that, in this line of thinking, the idea must be that the United Nations is the best or only international body to represent “the common good.” Otherwise, I do not see this international consensus test, much less an explicit United Nations test, in the list of conditions, the criteria, for a just war—i.e., that the damage from the threat must be lasting and grave; all other means are exhausted; prospects for success are high; war should not produce a greater evil, et cetera.

Historically, the legitimate authority to decide wars was understood to be the states themselves, through the very political systems that Professor Capizzi mentioned. Therefore, I believe that the Cardinal’s assessment that the Vatican “always” has this view about the United Nations is simply historically incorrect. In fact, what appears to have happened over time is that the authority of the sovereign state to decide these matters was turned over first to the idea of some “higher” international authority represented by consensus, which became the United Nations, either by default or by intention.

I am not equipped to make any final judgments about religious doctrine, but it would seem to me that at the very least, we should question whether the United Nations is such an ultimate authority in deciding such morally charged political questions as war:

- More than half its members are not democracies;
- The United Nations has an extremely poor record in stopping genocide, such as in Rwanda and Sudan; and
- Its Human Rights Commission has been an absolute embarrassment. After it was reformed, it actually got worse.

All of these clearly questionable political and moral judgments, if you will, were done by consensus, by an international consensus through the mechanisms of the United Nations.

In this context, consensus is merely the lowest common denominator, whatever the U.N. General Assembly or some subsidiary body of the United Nations says it is. The decision is not “democratic” in that not all the states expressing their opinions there are democratic and represent the will of their peoples. The United Nations is a political body of nation-states; it’s not a moral body, and we should not convey this moral idea of “legitimacy” derived from the voice of the governed on it.

In fact, the word “legitimacy” does not appear in the United Nations Charter. But the words “self-defense” do. All nations are considered to have the right of self-defense, according to the U.N. Charter, and this right exists by international law *prior to* the actions of the United Nations Security Council. In other words, the U.N. Security Council does not—I repeat, does not—have the final legal, political, or even moral word when it comes to deciding whether a nation should defend itself.

Now, related to this critique was the idea that the United States did not go to war as a “last resort” in Iraq, that somehow if we had waited longer we could have resolved the issue without war. How the decision was made is a long and complicated story, but I can only remind us that the U.N. Security Council negotiated with Saddam Hussein for over 12 years, that at least 16 United Nations Security Council resolutions were passed to force him to live up to his promises, and that in 1998 he kicked out the U.N.’s weapons inspectors. After the September 11th attacks, it was made clear that Saddam had one last chance to come clean and to explain what had happened with the weapons that the United Nations inspectors had found some years earlier. He refused to do it, and that was the legal basis, according to the U.N. Security Council resolutions, for the U.S. and allied intervention in Iraq. So I cannot see how someone can argue, at least persuasively, that the “last resort” condition was somehow violated.

Certainly more patience, if you will, was shown in the Iraq War than in the military intervention against Serbia over Kosovo. There was no Security Council resolution authorizing that action, and yet few complained that that war was “unjust.” And as a matter of fact, there was far greater impatience with respect to Kosovo than with Iraq. In other words, a

much shorter period of time and much more of an aggressive action occurred, and that was because there was a consensus mainly between Europe and the United States. That is a political factor to keep in mind.

Let me turn to Archbishop Williams's criticism, namely that the Iraq War violated the just war theory of achieving a "good end," of which the Professor spoke about at length. Here I think in particular his idea, in his discussion of the benchmarks, is really the best answer. His analysis actually leads us to the opposite conclusion from Archbishop Williams: namely that pulling out of Iraq precipitously and simply washing our hands of the whole affair would result precisely in the very "evil" end we would otherwise want to avoid under the just war theory.

Whereas Archbishop Williams seems to claim that we violated that condition because we were not prepared to deal with the aftermath of the war, I would suggest that the war is not yet over and it's too early to make such moral judgments. Progress has occurred; the Professor made some reference to that. I don't necessarily need to remind us of the details of what's happening in Iraq, but if you make a historical comparison, for example, with the war and the occupations of Germany and Japan, they certainly were not without their troubling and even bloody episodes, and it took years to bring victory and then stability to those countries. In hindsight, applying today's criteria for Iraq, we could have concluded that in 1947 and 1948 things were not moving "fast enough." There was a span of eight to nine years in that particular war, and we are coming up on our fifth year in Iraq. So I think some historical perspective might be in order.

However, one thing would be certain: If we were to walk away, the chaos and the bloodshed in Iraq would get worse, resulting in the evil result that the Archbishop says we should be avoiding.

Now, the next point I want to make is actually a question I'd be very interested in hearing the Professor address. I think that what we really need in this day and age is more just war theory thought on how to deal with the extreme measures terrorists use against us, and how it affects our response. Much of the debate about waterboarding, Guantanamo Bay,

CIA prisons, etc., is really about this question, and we certainly could use more moral guidance rather than just political guidance. Usually the idea of proportionality is applied—i.e., that the means applied should be proportionate to the overall good we're hoping to achieve. But we have wild disagreements in this country about what proportionality really means, and I would very much appreciate the Professor's insights on this matter.

The last point I'd like to make is partly a comment and perhaps part question. Professor Capizzi contends that we should not allow war to be separated from political ends, implying that political ends would restrain the violence of war. He also argues that war should not be waged for non-political goals, such as religious and ideological goals. I understand this point clearly in terms of what the Nazis, Communists, and jihadists did and do in the name of their ideologies—i.e., using violence for some superior, inscrutable, and unaccountable authority that can lead to the horrors of "total war."

But I think we should also realize that there is some overlap in these categories that make the picture more complex. The ideological component of extremist Islamism is as much about politics and political authority as it is about religion (in fact, you can make a case that it has more to do with real-world power and politics than religion per se, even though obviously they try to mix the two). Second, our traditions of liberty and democracy are not without "ideological" content in the sense that they are based on certain principles that we deem universal. They are in themselves what I believe accountability and scrutiny are supposed to be about. But there are certain kinds of politics, and I should think we should make a distinction about political content.

Why should this distinction matter? Not all nations—not all politics, as it were—are equal in moral authority. At some point, you have to make a judgment about whether the authority of any given state, any given political system, or any international body, like the United Nations for that matter, has any real morality in the political world. And this is where values like freedom, democracy, justice, and respect for people's rights matter a great deal in terms of political content.

In the end, as Americans, we should strive to create an international order of liberty and democracy that creates more governments—more politics as it were—that represent these very same values. In that way, I think we could be more comfortable that our “politics” and our “ideology” are not merely compatible, but one and the same.

**DR. CAPIZZI:** I’ll try to take a stab at a few of the questions, at least, and admit at the beginning that the last two require a real discussion rather than just sort of a point-counterpoint, because they were excellent points. First, in terms of the Vatican’s approach, the Vatican tends to use the word “always” rather liberally—“we always teach this, we always teach that”—so it’s hard to understand what to make of it. I think you’re right in the sense that the Catholic church has certainly not always taught that international authority is the sole legitimate authority.

On the other hand, there’s definitely a tendency in Catholic thinking to move legitimate authority away from individual states toward some sort of better representative of the international good—which of course Catholic thinking presupposes. I think there’s a danger to which you’re pointing in the reduction of the international good to an institution like the U.N., as though it simply must be serving the international good or have in better mind the international good than some individual state can. There certainly can be times when that’s true, but there can also be times when that’s false. And so that’s why legitimate authority still resides, statutorily, in the states, as you point out. They have the right of self-defense, for instance, and nobody can take that from them, to the extent that they’re capable of executing defense of it.

As to whether it’s not a last resort, I agree with your analysis that if anything, it was a last resort. I think, in a sense, the two questions about legitimate authority and last resort converge, however, and make this a little more complicated—although I would still want to answer this in the same way that you had. And this goes to a kind of a contemporary reduction of the just causes of war simply to self-defense or defense of the nation. That’s a modern development. As some of you may know who have

studied the just war theory, in the past there were other causes. For instance, vindication of rights, punishment of a government or a country, a state, that had done something against you.

And I think, in fact, the second conflict in Iraq, fits very, very well within the understanding of punishing Saddam as a kind of cause for the war. And in part, the punishment attaches to his utterly flagrant violations of U.N. laws and treaties to which he had subjected himself. However, in a sense that complicates the legitimate authority question by saying, okay, if you’re going to punish him—which I think is justifiable—for U.N. issues, then doesn’t the U.N. have some kind of say in whether we punish him now?

However, the problem is, we know the U.N.—for many of the reasons you pointed out—is self-interested. There’s a kind of conflictual nature in the way it’s set up. Countries that are doing business and profiting from Iraq are at the same time making judgments about whether we should be punishing Iraq. The U.N. doesn’t necessarily have the only say in how it executes its own good legislation. But nonetheless, you can see how that complicates things a little bit.

I’ve said a lot already, but I want to at least get to the politics question. Like a good conservative, I think of politics as sort of avoiding ideology. I understand that there are ideological elements to politics, but I think that to the extent that political activity, the activity of statesmen, becomes about the pursuit of things that are more and more ideological, then you’ll see, almost in every circumstance when that happens, a lessening of the restraints of political activity.

Politics always needs to be limited by particular goods, and freedom is a good—no question about it. But how to act on the good of freedom or the good of expanding liberty has got to be really closely aligned with particularities, specifics. In what way is freedom being threatened here? In what way might we be able to expand freedom there? There always must be very, very specific questions attaching discrete political goods to certain ideological commitments. Because the more the goods become, let’s say, less concrete, the more prone you are, I think, to unrestrained politics, which I think is almost never good for anybody.



## Questions and Answers

**JAMES CARAFANO, The Heritage Foundation:** For any moral system to work, it has to give somebody a choice and assign them responsibility for making that choice, and then have the responsibility for the consequences of that choice, whether good or bad. So a cynic would argue that just war theory evolved because the church was trying to control the sovereignty, but in practice, as it evolved over it time, it actually gave an enormous amount of authority and power and responsibility to the sovereign. And as the nation-state evolved, just war theory actually empowered the nation-state and for moral authorities has actually been a pretty effective system over the centuries in restraining states from doing bad things.

So my question goes to Kim's point. If you follow this logic of devolving responsibility onto the United Nations, isn't that really endangering the practice and application of just war theory and undermining the authority of the state, and taking away one of the really significant checks and balances on the illegitimate exercise of power?

**DR. CAPIZZI:** I completely agree. There's a great Lutheran theologian who is not read much anymore—his name is Helmut Thielicke—and he addressed precisely this kind of point. Because at the time, in the 1950s and early '60s, Catholic thinkers in particular and of course lots of liberal Protestants were really talking about universal world order; really trying to embolden the notion of a kind of institution that would somehow represent the international common good, and Thielicke basically called this the Antichrist. And he couldn't think of anything more threatening than unchecked power.

So, I'm in complete agreement: To move increasingly in that direction is problematic. On the other hand, it's also clear that the more international cooperation you can get for certain kinds of goods—genuine goods—typically the better it will proceed. I think a good statesman is always trying to navigate, like Bush did; he did try to do what his father had done and muster international support for something because he understood that that's politically important. It is politically important to try to get people allied to the pursuit of the same good as you.

And that's because other other nation-states have interests, and we simply have to consider their interests when we're considering the pursuit of our own.

**DR. HOLMES:** The Westphalian system was created to protect national sovereignty—from a century of religious wars, the kind of ideological wars that led to all kinds of excesses in ways you were referring to. The Westphalian system of national sovereignty tried to re-introduce that kind of particularity of politics that you mentioned in the nation-state. It wasn't going to be perfect, but they saw it as checks and balances and a kind of self-restraint that became the foundation of the European balance of power system up until it collapsed, really, in World War I, and then certainly in the great ideological movements of World War II.

The problem is that the founders of the United Nations were trying to do two very different things. First, they were trying to at least give a nod to that system, recognizing that nation-states were still sovereign. At the same time, they were trying to incorporate the failed idealism of the League of Nations, in the sense of what the Professor talked about concerning the Catholic order—that there must be some kind of higher international order that can supersede and kind of balance out, if you will, some of the imbalances when the nation-state and balance of power systems fail, as they did clearly in World War I and World War II.

Whether or not that's legitimate, I can't say; but I think the problem is that in practice, as we have seen it in the United Nations, the concept has moved decidedly away from the Westphalian sense of checks and balances, the rights of the sovereign state, and the original idea of that particularity that was extremely important to this idea—that there is some kind of abstract higher moral political authority represented in fact by the U.N. It's out there and it somehow has to be discovered and manifested politically through the actions of the UN. I would say that's not only wrong, but it's politically unrealistic.

**ANDREW FINK:** I'm Andrew Fink, an intern at The Heritage Foundation. I have two questions, both for you, Dr. Capizzi. First of all, I'm very happy you brought up punitive warfare, a very understudied topic. But how would you apply, say, just war

theory—especially your rendition of it—to any idea of indirect punitive warfare? In other words, deliberately fomenting chaos or aiding and abetting splinter groups inside, let's say, maybe a Communist regime or something like that.

Secondly, which goes to your question, Mr. Carafano, just warfare was of course developed by Augustine before the nation-state, and it perhaps was a happy coincidence that European history turned out the way it did. But can we in any way apply this to, say, an era where most nation-states won't even be European, won't even have the Western Christian tradition behind it? And when we talk about how just war theory helped Europe avoid this problem, did it? We talked about World War I; what about the Napoleonic wars?

**DR. CAPIZZI:** To be honest, I'm going to need hear more about the first question.

**MR. FINK:** The purpose of warfare is, of course, to produce a more just political order afterwards. How about warfare that is specifically designed to upset political order and create chaos? Say, we're going to give Stinger missiles to an insurgent group, et cetera.

**DR. CAPIZZI:** Well, any kind of action, military or otherwise, that seeks to disrupt an existing order is going to have to be justified, it seems to me, on the basis of a claim that this is somehow going to produce a better order subsequent to that activity, and obviously also make a claim about the nature of justice that's occurring in that place. For instance, Iraq had relative stability; it had a relative political order, in a sense, one that has proven very, very tricky to replicate in Iraq. But it obviously was absent anything remotely like justice, right? So that in part became a kind of justifying rationale for upsetting that order: You upset the order provided by a dictator to bring about a more peaceful order, one that's going to be balancing justice and order.

Again, just war analysis doesn't work very well in the abstract. We have to really think about what we are talking about here. For instance, overthrowing some sort of Communist authoritarianism—is that what you're talking about?

**MR. FINK:** Like Afghanistan or like starting an insurgency in Laos, or today, aiding Azeri separatists in Iran.

**DR. CAPIZZI:** I can only speak very, very vaguely, I think, in response to that and say that those things would be justified precisely to the extent that the goals are discrete. What are you trying to do? And will these kinds of activities attain those goals? Do you have a relative certitude that they will, which goes to reasonable hope of success? In certain circumstances, those kinds of things can be justifiable.

The second question had a couple of ancillary questions attached to it. Has just war theory worked? The just war theory—this goes back to Ryan's earlier point—is not going to prevent people from being nasty to each other. That's an Augustinian insight; this is why Augustine is considered the father, at least in the Christian tradition, of just war theory. So people are going to be nasty to each other—there's no doubt about it—and they will continue to be, so we can't outlaw war. This is why I made the point that just war theory serves in part to make war civilized—to politicize it is a language they use in some other contexts to attach it to discrete ends.

On the other hand, just war theory clearly has civilized war, even in the way you're talking about it. Warfare has not become more and more total; warfare has become less and less total over the last three or four decades. We spend a lot of money in the United States and a lot of energy thinking how we can target better. Where does that come from? Why is that a concern? The just war theory says it should be a concern because it's going to conduce to peace, and I think we understand that. You even get military analysts who are anxious about this concern for targeting, and rightly so. You can understand what they're saying: This makes it harder for us to achieve military objectives.

But nonetheless, we view this as a good that they do this. So I think the just war theory has shown that it does work to civilize war. It does, in a sense, absolutely prohibit the kinds of conflicts that Islamic fundamentalism is pursuing, the ones where you don't distinguish between even your friends but will sacrifice them towards your goods. You will not distinguish between an enemy combatant and a non-combatant. Instead, you'll distinguish between whether they're a believer or not, or something like

that. And simply by virtue of being a believer or an unbeliever, they become a target even if they're not actually doing anything opposed to you.

So I think there are lots of ways you could make the case. I hope that's actually addressing that second question.

**LEE CASEY:** My name is Lee Casey. I'm a lawyer here in town. I just wanted to make one comment and see if you could react to it. It seems to me just war theory is in fact a moral principle and a theological doctrine, and a complex one. But I would point out that it is not actually law. It is not coextensive with either branch of the laws of war, the *jus ad bellum* or the *jus in bello* [law of conducting war], or so I would argue. It has certainly informed them, but it is not actually the state of the law in terms of what people can and cannot do.

**DR. CAPIZZI:** It's not law in an obvious sense; you can't find anywhere somebody saying, follow the *jus ad bellum* criteria here. On the other hand, for instance, international documents do seem to want to make distinctions between combatants and non-combatants as legitimate targets, do make certain provisions for the treatment of the enemy once they no longer are combating against you, once they become prisoners, and things like this—all of which, you could argue, derive at least in some way from just war analysis. Even the reduction, which I said I don't favor, of just cause to right of self-defense that is in international law follows from just war theory. Just war theory might, I would want to argue, expand beyond that, but nonetheless it does follow. Prohibitions of unconditional surrender, sort of tensions about unconditional surrender that are in some international documents also seem to come from just war theory.

I think this is a good point. You don't want to think of just war theory as something that drops from the heavens onto political practice. Instead, I think it's better thought of as something that grows up around right political activity: Whether that political activity is engaged in by a Christian or a non-Christian or a Roman or a German, right political activity will look like this. And this is why just war theory is often also attached to some sort of natural law analysis. But you're right in a technical sense, but on the other hand I think you can see

international law echoing just war theory rather strongly, rather clearly in some cases.

I promised to get to the terrorism question and the extreme measures. I think there's no doubt that terrorism today is a principle of disorder nationally, and people who deny that, I think, are denying a real reflection on political order. So terrorism is a major problem. It's a principle of disorder and as such, good politics needs to address it, needs to try to eradicate it. In terms of the extreme measures taken by terrorists, I think what just war theory counsels is to try to figure out means of encouraging terrorists to embrace being regular warriors—being regular warriors in the sense of wearing uniforms, respecting certain kinds of targets, and also therefore rejecting other kinds of targets.

And so the just war theory is going to try to cast itself, in part, at those people, those institutions that are fighting against terrorism, to not facilitate their move away from war's domestication or war's civilization, but instead towards it. In terms of the particular strategies, I'm not certain how to do that, how to encourage them when obviously the goals they are seeking are hard to attain, should they regularize themselves.

The just war theory would say it didn't warrant our eschewing the good principles of political order in order to squash them or in order to capture them. Instead, in fact, it would encourage us to do the opposite, because that would be a means of trying to get them to embrace a more civilized way of war-waging. Am I ducking the question?

**DR. HOLMES:** No, I think what you're struggling with is a point that you and others have made: This is not a moral checklist. You just can't come down and have black and white boxes that are being checked and you have the right answer. It's far too complex. It is certainly sensible that we want to project the right way to act to extremists, and hopefully they'll come around. I think it's also right that we apply the idea of proportionality. As they say, extreme cases make bad law. You can do similar things in moral reasoning. You can create some hypothetical situation (“Well, what would we do if...”) and then try to draw some general rule from that, but you would start tripping all over yourself with exceptions and rules and the like,

which is what we sometimes do when we talk about torture.

There does come a time—maybe in extreme situations, for example—when we might need to use some of the methods we used in World War II—when it would probably be deemed by current moral authorities to be, if not war crimes, certainly very close to them. I'm thinking about the dropping of an atomic bomb, about some of the things the British Air Force did in Dresden and others, when it was a total war. And yet, there was not a lot of agonizing at the time or even to this day, because there was the belief that we were under a grave existential threat and that these methods were appropriate for the degree of the threat.

The question I have is, is that historically determined? In other words, do we decide what is mor-

ally correct based upon historical relativism? I thought we should have an argument that's consistent through time. Is it that way or is it not? I don't necessarily have a clear answer for it; I know a lot of Americans don't. But there can be times when a nation or a society finds itself in extreme peril, and where the methods used would not be considered to be appropriate under times of peace at all. The whole point—just like war, which is extreme violence—is that the action is intended to restore peace or restore liberty or restore whatever the political system was that was protecting the very rights of the people to begin with. These are complex issues, and when we think about them, we have to think about how they have been practiced historically to inform us of what we should do in the future.