

JUST WAR AND THE CATHOLIC CHURCH
A Conversation With George Weigel

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In George Weigel's Pope John XXIII's lecture entitled 'The Just War Tradition and the World after September 11'¹ there is much with which I agree. However, on what appears to be a central thrust of his lecture, where he argues: "The claim that a 'presumption against violence' is at the root of the just war tradition cannot be sustained historically or theologically"² I disagree and will outline my reasons for so doing. But first to the points of agreement.

Recovery of Natural Law 'Moral Realism'

Weigel lauds the fact that the events of September 11, 2001 signalled the collapse of an ethos of moral relativism in the United States. The shock of recognition of intrinsic evil has allowed 'moral realism' to come to the fore in public and political consciousness.

I cannot disagree that this was perhaps the defining moment for US society. But, I would put the emergence of the world-wide shift in perception about a decade earlier. It occurred in the field of International Humanitarian Law and may be described as the highest secular authority's coincident recognition of an objective moral order as argued for in *Veritatis Splendor* of 6 August 1993. The world recovered the governing idea of natural law.

Herbert McCabe wrote "... to live according to the natural law is to judge and live true to the divine human project of building up the human community by loving and doing good and avoiding evil. Actions which are conducive to this project are good and those which are destructive of it are bad. And they are definitively and radically bad when they cut at the very roots of such a community in a way identifiable by the practical reason, or by faith in Divine revelation pointing to the same conclusion, only assuredly so."³

There was a time after the Nuremberg and Tokyo War Crimes Trials, and the drafting of the Genocide Convention in the aftermath of World War II, when one could be excused for thinking that humankind had lost its collective ability to recognize the 'radically bad'.

The cold war paralysis of the Security Council was one factor. Another, I think, was the collapse of the European colonizing era with the concurrent recognition that the values of other cultures and epochs had been grossly suppressed in favour of rampant Eurocentrism. Overall, it led to a loss of nerve in the confident assertion that there are activities which are so radically inimical to the building up of human community that they must always be characterized as evil.

However, the horrors of the conflict in the former Yugoslavia in the early 1990s, including the massacre of innocent civilians, ethnic cleansing and displacement of whole populations and the use of sexual violence as an instrument of terror, were so vividly portrayed to the world that the Security Council of the United Nations had to deal with these aptly named 'crimes against humanity'.

The international community recovered its nerve and began to hold responsible those individuals who either on the ground or in the military or political command structure were personally

¹ 51 Cath. U.L., Rev. 689, pp 700-704

² Ibid, p.704

³ H. McCabe, 'Manuals and Rule Books' in *Understanding Veritatis Splendor*, ed. J. Wilkins (S.P.C.K. 1994) p.65

responsible for these attacks on the civilian population. This was done through the mechanism of the War Crimes Tribunal on the former Yugoslavia.

In the first judgement handed down by a trial chamber, it spoke of the targeting of the civilian non-combatant population on a wide-spread or systematic basis as being such that it “shook the conscience of mankind and warranted intervention by the international community.”⁴

There is a lovely consonance between this statement and the etymological root of conscience: ‘*conscientia*’ = ‘knowledge with another’. It is a reminder that acting or reacting conscientiously should be a consensual activity between adults and not a purely private matter. Clearly, in this instance, the trial chamber recognized the consensus as to the inherent evil of the activities being prosecuted.

So I would say that the activities of the War Crimes Tribunals on the former Yugoslavia (and Rwanda) authorized by the Security Council of the UN are a clear demonstration of the moral unity of humankind which is well able to recognize assaults on what it is that makes us human. We are undoubtedly entering a new era of ‘moral realism’ in the conduct of political affairs.

Against the Confusion of *Ius ad Bellum* and *Ius in Bello* Questions⁵

Weigel laments the fact that focus on the moral necessity of sufficiently discriminating between combatants and innocent civilians in the waging of war is taken to answer the question: “Is it just to go to war?” On the contrary, the latter is a different and prior question. It is important for the discharge of political responsibility not to conflate *ius ad bellum* and *ius in bello* questions. The proper *ius ad bellum* question is: Is there a morally justified political goal for the launching of military force to disable, almost certainly lethally, some enemy?

Generally speaking, I agree it is a prior exercise of statecraft to determine whether the launching of a society’s lethal military force against an enemy is justified in order to achieve peace. A decision to do so is *then* mediated through Rules of Engagement and so on, so that, at the military operational level, International Humanitarian Law is taken into account when fighting so as to achieve victory. The achieving of victory is never the end justifying the war; the achieving of peace is.

That prior exercise of statecraft should be governed by *ius ad bellum* considerations. Here it is regrettable that the Catechism of the Catholic Church (CCC)⁶ obscures some of the richness of the Just War tradition. It does this by separating the treatment of what should be the components of a coherent approach to the question.

This compounds the unfortunate decision to drop the term ‘Just War’ as a governing title or principle. After talking about the conditions governing *legitimate defence by military force*, the Catechism states in small print ‘these are the traditional elements enumerated in what is called the ‘just war’ doctrine (CCC 2309). In para 20 of the Prologue to the Catechism one is told ‘The use of small print in certain passages indicates observations of an historical or apologetic nature, or supplementary doctrinal explanations.’ This seems to me to be unduly dismissive of an honourable way of speaking, immediately comprehensible by decision-makers around the world. Why drop it?

But I turn to the core problem of the separate treatment of elements which should have been kept together.

⁴ I.C.T.Y. Prosecutor v Dusko Tadic, para 563

⁵ I have dealt with the relevant International Law in *The Ius of War in Contemporary Legal Practice in Law & Justice*, No.151, 2003, <http://www.lawandjustice.org.uk>

⁶ The Catechism of the Catholic Church (CCC) Geoffrey Chapman, London, 1994

Obligation of Political Authority

Immediately preceding the paragraph enumerating “the strict conditions for *legitimate defence by military force*’ (i.e. *ius ad bellum* criteria) one reads, “... governments cannot be denied the right of lawful self-defence once all peace efforts have failed.” (CCC 2308)

Would it not have been more helpful to at least repeat the wording of CCC 2265, “legitimate defence may not only be a right **but a grave duty** for one who is responsible for the lives of others.” (emphasis added) At the crucial point, there is an inexplicable dropping of the sense of *obligation* to defend one’s society from life-threatening aggression.

Threats to the Peace

Then one reads the conditions laid down in CCC 2309, they seem to be drawn with a view to dealing with an aggressive attack on a nation or community of nations. The rigorous conditions of moral legitimacy are:

“At one and the same time:

the damage inflicted by the aggressor on the nation or community of nations must be lasting, grave and certain;

all other means of putting an end to it must have been shown to be impractical or ineffective;

there must be serious prospects of success;

the use of arms must not produce evils and disorders graver than the evil to be eliminated. The power of modern means of destruction weighs very heavily in evaluating this condition.

In waiting for the aggression to occur (“the damage **inflicted**”), CCC 2309 seems to mirror Article 51 of the Charter of the United Nations: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence **if an armed attack occurs** against a member of the United Nations...” (emphasis added).

This by no means exhausts the instances where the United Nations Charter envisages the legitimate use of armed force. Under Article 39 the Security Council is invested with the duty to determine the existence of any threat to the peace, breach of the peace, or act of aggression. It is then empowered by the same Article to decide what needs to be done to maintain or restore international peace and security. Included in the measures it might authorize is the use of armed force (Article 42).

So, a pre-emptive strike disabling a putative aggressor, so judged by the collective judgement of the Security Council, is permissible and it seems incredible that the Catechism does not embrace that reach of International Law. The Church runs the risk of being left high and dry by developments in relation to terrorists, non-state actors and rogue states. Any of these protagonists can so threaten a State’s security that Article 51’s drafting in terms of defensive action after the fact and the parallel approach in CCC 2309, must now be regarded as problematic and certainly inadequate.

Whilst one can only support Pope John Paul II’s call for a “*renewal of international law and international institutions*”⁷, this call would be immeasurably strengthened by the Catechism’s recognition of the legitimacy of the marshalling of collective wisdom authorizing military action to deal with **threats** to the peace. This would then enable a constructive response to the Secretary General’s plea: “[Security Council] members may need to begin a discussion on the criteria for an early authorization of coercive measures to address certain types of threats – for instance, terrorist groups armed with weapons of mass destruction.” He immediately went on: “And they still need to engage in serious discussion of the best way to respond to threats of genocide or other comparable massive violations of human rights.”⁸

⁷ 2000 World Day of Peace Message, para 11,12

⁸ Address to UNGA, 23.9.2003

Overthrow of Tyrants

This brings me to another grave weakness in the construction of the Catechism in these matters. A person reading CCC 2308 and 2309 is referred by the margin to CCC 2243 which reads as follows: “Armed *resistance* to oppression by political authority is not legitimate, unless all the following conditions are met: (1) there is certain, grave and prolonged violation of fundamental rights; (2) all other means of redress have been exhausted; (3) such resistance will not provoke worse disorders; (4) there is well-founded hope of success; and (5) it is impossible reasonably to foresee any better solution.”⁹

In my view, this paragraph or something like it should be incorporated into, or brought into immediate proximity with, CCC 2309 because its present location seems only to allow for armed rebellion by ‘citizens’, presumably with the wider meaning of inhabitants of the area subject to the oppressor’s authority. What it does not make clear is the right of these ‘citizens’, invariably inferior in their arms to their oppressor, to call on allies, including foreign States, to help them throw off the tyrant.

When a government turns its own military or security forces against elements of its own population, either as a powerful act of despotism or the last throw of the dice in a disintegrating or failed State situation, the Security Council often, but shamefully not always, uses “the threat to international peace and security” formula to authorize military intervention by member States to protect the civilian population. A more coherent re-locating of elements of the Catechism would better position the Church to make a fruitful contribution to the current debate concerning military action to avert or ameliorate a humanitarian catastrophe.

So now to the point of disagreement with Weigel.

The Presumption Against Violence

Weigel argues against “this notion of a ‘presumption against violence’ as the starting point of just war analysis”.¹⁰ He sees this as a threat to the psychological state of decision-makers vested with the grave moral obligation to exercise statecraft in defence of their societies. He sets out to combat the threat of “functional or de facto pacifism”¹¹ vigorously. Is he altogether wrong in his perception of the situation, not only amongst Catholic opinion formers in the United States, but also in the Curia amongst those responsible for formulating the policy espoused by the Universal Church?

Certainly, I recall during the Balkan warfare of the early 1990s, Pope John Paul II constantly espoused his conviction that war could no longer be accepted as a means of pursuing political objectives. His Foreign Minister, the then Monsignor Tauran, was kept on a short leash and was able to endorse only humanitarian food and medicine convoys accompanied by protective and deterrent force.¹² This has been a constant theme of the present Pontiff. In an address to the Diplomatic Corps accredited to the Holy See in early 2003, he repeated his conviction: “No to war, war is never inevitable, it is always a defeat for humankind”.

Germain Grisez, by no means a radical liberal, has opined: “Now it appears that a true development of Christian understanding on this matter [socially authorized killing] is possible and even is occurring. It is like the development by which Christians came to recognize slavery as always unjustifiable, even though for many centuries it was widely considered morally acceptable.”¹³

⁹ This paragraph is to be found under the heading of the Fourth Commandment, ‘Honour thy father and thy mother’ which obviously starts with a paternalistic view of political authority.

¹⁰ 51 Cath. U.L., Rev. 689, p.701

¹¹ Ibid, p.691

¹² L’Osservatore Romano, 18 December 1992

¹³ Germain Grisez, *The Way of the Lord Jesus*, Vol 1, *Christian Moral Principles*, Ch 8, QH, Para 10, pp 219-200

In Grisez's opinion "... Christians too often have overlooked the fact that the warrior God of the old covenant has become the crucified king of peace of the new."¹⁴ This points in the right direction but falls short of a true theological justification for a presumption against violence.

Rather, it is a question of recognizing exactly what is brought about by the fact of the crucified and **resurrected** king of peace. It is not simply that the incarnate Son of God enjoys a transformed way of Himself assuming human nature, i.e. as freed from the constraints of ordinary earthly existence.

By way of the Paschal mystery, human nature has a redeemed capacity to be perfectly animated with the Divine life of the Trinity.

This is such an exalted ontological status that it is an even more grave matter to destroy such a capacious being than it would otherwise be. **That** is what gives rise to the presumption against the use of lethal force even for the narrow purpose of disabling an aggressor.

In *Evangelium Vitae* Pope John Paul II, without using the word presumption, describes the human being in such terms as to make the deliberate destruction of such a creature almost unbearable to the Christian believer. "The life which God gives man is quite different from the life of all other living creatures, inasmuch as man, although formed from the dust of the earth (dv. Gen 2:7, 3:19, Job 35/15, Ps 103:14, 104:29), is a manifestation of God in the world, a sign of his presence, a trace of his glory (cf. Gen 1:26-27, Ps 8:6). This is what Saint Irenaeus of Lyons wanted to emphasize in his celebrated definition: "Man, living man, is the glory of God". Man has been given a sublime dignity, based on the intimate bond which unites him to his Creator: in man there shines forth a reflection of God himself."¹⁵

Conscious of the sublime dignity of the human being so described, but equally aware of the tradition of the Catholic Church on the right of defence against life-threatening aggression, the Pope speaks in terms which are truly remarkable for a Papal Encyclical. "There are in fact situations in which values proposed by God's Law seem to involve a genuine paradox. This happens for example in the case of *legitimate defence*, in which the right to protect one's own life and the duty not to harm someone else's life are difficult to reconcile in practice."¹⁶ No-one reading these articles of the Encyclical can fail to be moved by the evident anguish of the Pope grappling with the tension of living the Christian life in the midst of real evil in the world.

A further ontological underpinning of the presumption against violence is offered by the Australian, Brian Johnstone CSsR. He argues that today's world-wide social milieu formed by the enlightenment is based on a view of human beings basically at odds with one another. Pacification by way of contract, social compact and treaties suppresses the violent expression of difference, but the underlying reality is violence.

The Resurrection and the Trinity give believers faith in a different ultimate reality. The overcoming of the violence of the Crucifixion changes the ultimate structuring of social reality, and the doctrine of the Trinity enables us to perceive difference without domination or violence as the ultimate ontological reality. This gives a perspective or vantage point which enables a critical examination of theories of ethics.

These must be judged wanting if their presumption is that unruly violence requiring suppression by ordered violence is the order of the day. Rather, a Christian should start with the "priority of ontological peace". If one does, "the violence of war must be seen as a tragic aberration, contrary to the fundamental nature of reality".¹⁷ This does not lead one to absolute pacifism. But it gives one a very different starting point (presumption) for the consideration of the use of military force.

¹⁴ Ibid

¹⁵ John Paul II, *Evangelium Vitae*, 1995 Art. 34.2.

¹⁶ Ibid, Art. 55.1

¹⁷ Brian V Johnstone, CSsR, *Transformation Ethics: The Moral Implications of the Resurrection in The Resurrection*, ed. Davis, Kendall, O'Collins, OUP 1997, p.353

Only non-innocent life may be killed

Another aspect of *Evangelium Vitae* which to my mind raises a practical presumption against violence for one who wishes to remain true to the tenets of Catholic Christianity is to be found in the most authoritative teaching in that Encyclical: “Therefore, by the authority which Christ conferred upon Peter and his Successors, and in communion with the Bishops of the Catholic Church, I confirm that the direct and voluntary killing of an innocent human being is always gravely immoral. The deliberate decision to deprive an innocent human being of his life is always morally evil and can never be licit either as an end in itself or as a means to a good end.”¹⁸

Given such teaching by the Papal Magisterium, grave obligations follow to ensure that the life to be destroyed in military conflict is not innocent. I would say, borrowing common law language, that the prudent course is to acknowledge a presumption of innocence which can be displaced by evidence of non-innocence, the standard of proof being something like “beyond reasonable doubt”.

The key question then becomes, Who is an innocent human being? To the English ear, it sounds as though one is enquiring whether a person is blameless or guiltless. But, its meaning in Catholic tradition lies in its root, *in nocere*, which negatives ‘to do injury’. So ‘innocent’ means ‘not doing harm’. It follows that it is gravely immoral to kill a human being not in the course of inflicting life-threatening injury.

For some, the Pope’s application of this meaning to argue against capital punishment of a murderer who is securely imprisoned is most controversial.¹⁹ But the logic of the application of the fundamental principle is unassailable. The principle also requires the correct characterization of the armed forces of a nation state or terrorist organization. Can they be properly characterized as non-innocent so as to justify the application of disabling and probably lethal military force against them?²⁰

In such a situation, to over-ride the presumption of innocence would surely require the most stringent and exhaustive assessment of intelligence, because the capacity of the aggressor and the imminence of the threat’s realization may be exaggerated or simply misread.

St Thomas Aquinas

It is always useful in a discussion such as this to call St Thomas Aquinas in aid of one’s position. Thus, Weigel argues, “The classic Catholic tradition, whose roots are found in Augustine, begins with the presumption – better, the moral judgment – that rightly-constituted publicly (sic) authority is under a strict moral obligation to defend the security of those for whom it has assumed responsibility, even if this puts the magistrate’s own life in jeopardy. That is why St Thomas locates his discussion of *bellum iustum* within the treatise on charity in the *Summa Theologiae*.”²¹ I think this is to misread St Thomas Aquinas.

It should be remembered that Thomas conceived the *Summa Theologiae* as a handbook for Dominican preachers and confessors. He wanted to help them assist people, in this case those in authority, to live the sort of life which manifests *caritas*. It is therefore important to identify those actions which can destroy or severely impair the life of *caritas* in a person ie. which are sinful.

Weigel seems to have missed the introductory sentence to this part of the *Summa* – “We now turn to the vices against peace where deeds are involved. These are schism, brawling, sedition and war.”²²

¹⁸ John Paul II, *Evangelium Vitae*, 1995 Art. 57.4.5

¹⁹ Ibid, Art. 56.

²⁰ The phrase ‘in the course of’ does allow for the disabling of an armed force readying itself to make real an illegal threat to the peace. One does not have to wait for the actual launch of the attack. See Endnote 5 above.

²¹ 51 Cath U.L., Rev. 689, p 702

²² St 2a.2ae.39.intro

War is characterized as a vice against peace. The presumption must be that a Christian not engage in it. It is to be assumed to be a sinful activity.

That is the true starting point which must be given due weight well before consideration of the duty and obligation of the sovereign exercising authority. It is in that context that the first article of question 40 makes sense: "Is it always a sin to wage war?" The answer emerges, to paraphrase I hope fairly: "Not always, but you can assume it is unless three conditions are fulfilled (authority, just cause and right intention) and then the duty of one vested with the obligation to defend the common good will be discharged without sinning."

This logic of thinking is, I believe, very apparent in the Pope's writing of *Evangelium Vitae* where, as indicated above, he grapples with the paradox involved in trying to live out the Gospel whilst confronted with an aggressor. He starts the relevant Article : "To kill a human being, in whom the image of God is present, is a particularly serious sin. *Only God is the master of life!* Yet from the beginning, faced with the many and often tragic cases which occur in the life of individuals and society, Christian reflection has sought a fuller and deeper understanding of what God's commandment prohibits and prescribes."²³ In the end, but it is the end and not the starting point, he acknowledges: "legitimate defence can be not only a right but a grave duty for someone responsible for another's life, the common good of the family or of the State."²⁴

I hope I have been able to offer a few arguments which could theologially ground a presumption against violence as a violation of peace. But I cannot leave this reflection in the rarified atmosphere of academic dispute. The merit of Weigel's paper is that he *feels* the issues as one who is in a position to exercise influence over the mindset of those exercising statecraft in this area. I offer what it feels like to actually exercise statecraft in this area.

A Case Study of *Ius ad Bellum* decision-making

Whilst studying Scripture at Oxford in 1969, I was translating the passage at the end of St Matthew's version of the Sermon on the Mount. Briefly, to be a true disciple of Jesus Christ, one must imitate the heavenly Father "for he causes his sun to rise on bad men as well as good, and his rain to fall on honest and dishonest men alike.... Be perfect as your heavenly Father is perfect." (Mt 5:45, 48) That is, the life-giving activity of God is not destructively withdrawn from a person because he or she is unjust or evil. And we are to imitate that non-violent, non-discriminating support of every human life, even of 'the enemy'.

This insight into the demands of discipleship hit me with tremendous force, and I realized that revelation can mean revolution – a total change of direction. Without detailing every step, this led me to oppose Australia's participation in the Vietnam War and then into national politics where I rather comfortably basked in the conviction that I was indeed a true believer for whom Martin Luther King was my martyr hero. His photo hung in a prominent position in my Canberra office. I held a certain contempt for those who still espoused the casuistry of the just war doctrine as a means of rationalizing resort to force.

That is, until January 1991, when the Australian Senate was called upon to pass a resolution endorsing Australia's commitment to assist in the United Nations authorized naval blockade of the "Persian Gulf" in response to the aggression unleashed by the despotic Saddam Hussein on the people of Kuwait in the latter months of 1990.

As a Minister in the Australian Government and a Senator, I agonized during the days preceding the vote. After exhaustively noting the satisfaction of every criteria of the just war theory, I supported the motion, saying that Australia "had to be part of the process of removing a tyrant who was claiming the lives of so many innocent victims. I may be grievously wrong in coming to this

²³ *Evangelium Vitae*, Art 55.1, footnoting CCC, No. 2263-2269, cf. also *Catechism of the Council of Trent III*, paras 327-332.

²⁴ *Ibid*, Art 55.2, quoting CCC, No. 2265, (amended in *Corrigenda*, but not affecting the sense of this point).

conclusion. I may be being misled by the same demonic force which animates the Iraqi regime ... But if so, I will have to bear responsibility for acting against the purpose which the creative Spirit has for humanity. I have concluded that there is just cause for the world community to have resolved to act as it is acting."²⁵

I turned the photo of Martin Luther King to the wall. I could not bear the gaze of my martyr hero penetrating to my core. I could hardly bear opening St Matthew's Gospel for fear of being confronted by the revelatory passage which had changed my life. My heart broke, and is still broken.

So, I have experienced in much smaller measure something of the tension and indeed anguish of what currently characterizes the Holy See's reflection on the morality of the waging of war. Supposing this is not idiosyncratic to the present Pope or his advisors no doubt we will see much more evidence of this over the next several decades. And just as undoubtedly, we can expect to see vigorous debate of the sort engaged in by Weigel --- and just as vigorous a response!

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²⁵ Senate Hansard, 21 January 1991 p.39