

Preventing Unjust War: The Role of the Catholic Church

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1. Setting the Ecclesial Context

In his World Day of Peace message of January 1, 2017, Pope Francis addressed the topic of “Nonviolence: A Style of Politics for Peace.” The pontiff argues that

[v]iolence is not the cure for our broken world. Countering violence with violence leads at best to forced migrations and enormous suffering, because vast amounts of resources are diverted to military ends and away from the everyday needs of young people, families experiencing hardship, the elderly, the infirm and the great majority of people in our world. At worst, it can lead to the death, physical and spiritual, of many people, if not of all.¹

The alternative is the nonviolence taught and exemplified by Jesus: “When he stopped her accusers from stoning the woman caught in adultery (cf. Jn 8:1–11), and when, on the night before he died, he told Peter to put away his sword (cf. Mt 26:52), Jesus marked out the path of nonviolence. He walked that path to the very end, to the cross, whereby he became our peace and put an end to hostility (cf. Eph 2:14–16).”

Therefore, says the Pope, “To be true followers of Jesus today [...] includes embracing his teaching about nonviolence.” Jesus’ “command to *love your enemies* (cf. Lk 6:27) is rightly considered the *magna carta* of Christian nonviolence. It does not consist in succumbing to evil [...], but in responding to evil with good (cf. Rom 12:17–21), and thereby breaking the chain of injustice.” Nonviolence, furthermore, is not only an evangelical imperative. Instead, in the twentieth century it was proven to be a practical strategy. In Francis’s words again:

[T]he decisive and consistent practice of nonviolence has produced impressive results. The achievements of Mahatma Gandhi and Khan Abdul Ghaffar Khan in

the liberation of India, and of Dr. Martin Luther King, Jr. in combating racial discrimination will never be forgotten [...]. Nor can we forget the eventful decade that ended with the fall of Communist regimes in Europe [...] [...] Reflecting on the events of 1989 in his 1991 Encyclical *Centesimus Annus*, my predecessor [Saint John Paul II] highlighted the fact that momentous change in the lives of people, nations and states had come about “by means of peaceful protest, using only the weapons of truth and justice” [...]. Pope John Paul went on to say: “May people learn to fight for justice without violence, renouncing class struggle in their internal disputes and war in international ones.”

Nonetheless, despite this rousing affirmation of nonviolence, Pope Francis stops short of endorsing pacifism as a universal requirement of Christian discipleship or of national security policy. He refuses, that is, to jettison the just war tradition, as was called for by “An Appeal to the Catholic Church to Re-Commit to the Centrality of Gospel Nonviolence,” the statement issued at the conclusion of the April 2016 conference in Rome sponsored by Pax Christi International and the Pontifical Council on Justice and Peace (since renamed the Dicastery for Integral Human Development). Here are the Pope’s exact, if parsimonious, words from his World Day of Peace message: “Peacebuilding through active nonviolence is the natural and necessary complement to *the Church’s continuing efforts to limit the use of force by the application of moral norms*” (emphasis added). In other words, the Church does not face an either/or choice between nonviolence and the just war tradition—here characterized as “*the effort to limit the use of force by the application of moral norms*”—but can embrace both/and.

There is no contradiction here, as the just war tradition has long endorsed nonviolent means of conflict resolution. Witness St. Augustine’s statement that “[p]reventing war through persuasion and seeking or attaining peace through peaceful means rather than through war are more glorious things than slaying men with the sword.”² This attitude eventually became codified in the just war tradition as the criterion of last resort, as articulated, for example, in the U.S. Bishops’ 1983 pastoral letter *The Challenge of Peace*: “For resort to war to be justified, all peaceful alternatives must have been exhausted.” In what they must have realized was an understatement, the bishops went on to observe that “[t]here are formidable problems in this requirement.”³

2. Posing the Question

The question I intend to address in this paper is how the just war tradition might be made more robust and stringent in its implementation so that last resort becomes ever more remote. According to the statement of the Rome conference, “there is no ‘just war’. Too often the ‘just war theory’ has been used to endorse rather than prevent or limit war. Suggesting that a ‘just war’ is possible also undermines the moral imperative to develop tools and capacities for nonviolent transformation of conflict.”⁴ I take a different perspective. The first part of my thesis is that the problem is not the just war tradition; the problem is the unjust war tradition, the propensity of nations to engage in aggression, oftentimes rationalizing it by specious use of just war language, which might in fact justify a war by other nations to defend human life and human rights against such aggression. Yes, every war is unjust on at least one side. But no, not all sides are always unjust. How might the just war tradition contribute meaningfully to preventing, and not only responding militarily to, unjust war? I confess, I do not know that it ever has. But perhaps this is a new moment.

Having set the ecclesial context, my argument proceeds in two stages. In the first, I present in summary fashion the argument of philosopher Jeff McMahan of Oxford University, who in his book *Killing in War*, published in 2009, has provided the most substantial alternative to Michael Walzer’s famous and seminal book on the just war convention, as he calls it, *Just and Unjust Wars*, first published in 1977. According to the editors of a book of essays titled *Reading Walzer*, McMahan is “unquestionably the most influential critic of the tradition represented in Walzer’s *Just and Unjust Wars*.”⁵ McMahan’s 2014 essay “The Prevention of Unjust Wars” is my principal source. In my argument’s second stage, I apply McMahan’s ideas to the Catholic Church, an application that McMahan himself does not envision, as he writes as a wholly secular philosopher. To be clear, I do not propose that the Catholic Church could or should be *solely* responsible for implementing McMahan’s proposal, but rather that it can play a significant role in developing a practical global ethic against unjust war and, in so doing, provide much-needed guidance especially to Catholics in the military, and even to Catholics in government, faced with making decisions about going to war (*jus ad bellum*).

3A. The Doctrine of Permissibility of Participation

McMahan’s argument itself proceeds in three major steps. First he outlines and critiques “the doctrine of permissibility of participation,” his name for the traditional view that combatants have

no personal responsibility for judging the morality of the war in which they are ordered to fight, but only to refuse to disobey illegal or immoral orders within whatever war they are participants. This, of course, leads to the curious situation in which combatants on both sides of a war, only one side of which can be just, have moral equivalency, so long as they abide by the rules of war, which mainly means not targeting civilians. Combatants on both sides have the moral right to kill combatants on the other side. McMahan puts this provocatively: “Those who accept the Permissibility of Participation [...] accept that while political leaders cannot themselves permissibly kill or order the killing of soldiers in another state who have not attacked them [...] it nevertheless becomes permissible for their soldiers to kill other soldiers when their leaders impermissibly order them to.”⁶ Simply put, an impermissible act becomes permissible when it is carried out under orders. It is possible for combatants, but not for leaders, to fight an unjust war justly. It is because McMahan rejects this paradoxical core doctrine of the war convention, as canonically expressed by Walzer, that McMahan’s work has become the focus for debate on this issue.

I will not rehearse fully McMahan’s rebuttal to critics who argue for the impracticality of his position. In brief, however, he argues that we can reject the moral doctrine of Permissibility of Participation and the moral equivalency of combatants (1) without rejecting the legal protections that all combatants should enjoy, (2) without undermining the capacity of nations to field the necessary military resistance to aggression against their territory or people, and (3) without giving undue advantage to those states that do not allow for conscientious objection to particular wars by individual soldiers. At least, as McMahan says, the “risk of reduced military efficiency in just wars must be weighed against the potential benefits of a widespread rejection of the Permissibility of Participation [...]. As long as we continue to accept [this doctrine], we will deprive ourselves of an important resource for the prevention of unjust wars: namely, the moral conscience of individuals” (238). That sentence succinctly articulates a second part of the thesis of this paper. Crucially, unsuccessful attempts to prevent *unjust* wars by encouraging acts of personal conscientious refusal need not threaten the capacity to wage just wars in response. Conscience cuts both ways.

But how is this resource to be tapped effectively, given the understandable reluctance of individuals under authority to break ranks when national survival is proclaimed to be at stake,

however speciously? This brings us to the second stage of McMahan's argument, to his "practical proposal."

3B. McMahan's Practical Proposal

McMahan acknowledges that the just war tradition needs greater clarity in its definition of what constitutes "just cause" if it is to "provide soldiers, political leaders, and the global public generally with authoritative guidance in matters of *jus ad bellum*"—the justice of going to war or not. It is not surprising that he sees this as "a task for moral philosophers." I would add moral theologians and scholars of the Catholic just war tradition. "The next step" in this practical proposal, according to McMahan, "should be to codify our improved understanding of *jus ad bellum* in a body of deontic principles stating prohibitions, permissions, and perhaps requirements concerning the resort to war and the continuation of war" (242). He believes it is possible for such principles "to lack the authority of law while nevertheless being more than merely hortatory." The third step takes us to the heart of the matter: "to establish a court or court-like institution that would interpret and apply the principles to particular cases" (242).

Even if this court lacked legally-binding authority, its moral authority could inform public debate and influence governmental decision-making, perhaps making it harder for a government to begin or continue what the court judged an unjust war. Such a court would not have the responsibility to enforce its findings against individual combatants in a war the court judged unjust. The aim of an *ad bellum* court, rather, would be to achieve and maintain a reliable degree of independent epistemic authority and therefore of trans-national moral authority (245).

McMahan addresses how such a court could be implemented. First, it would have to be "a congress of eminent and respected authorities [of diverse national and religious (including nonreligious) backgrounds (247)] on international law and just war theory" (246). Second, it "would have to be procedurally constrained to ensure that its judgments would be epistemically justified" (247). Third, it would "invite submissions from belligerents and welcome briefs from *amici curiae* [friends of the court]" (247). Judges "should be required to recuse themselves from cases involving any state to which they had close ties, such as citizenship" (248). McMahan acknowledges that such a court might be unlikely to exert much direct influence on "the deliberations of government," but holds that "it is possible that many soldiers could be persuaded to refuse to fight by the judgment of an *ad bellum* court that their war was unjust, particularly if

the doctrine of Permissibility of Participation had been discredited in their culture” (248). In short, “the central practical effect of the court would thus be on the consciences of individuals, including soldiers, civilians, and perhaps even a few government officials.” (248) Furthermore, McMahan speculates, “if states could anticipate that a ruling against them by the court might provoke resistance to their unjust war from their citizens and soldiers, thereby threatening their domestic legitimacy, the court could have a significant deterrent effect” (248).

McMahan addresses several problems this court would face, which I mention only in brief. If asked to rule on a war in progress, or a war imminently to begin, the judges might be forced to “compromise between the values of rapidity and soundness of judgment” (249). Further, the court “might lack access to empirical information that would be critical to its ability to evaluate a war” (249). Here is my own understatement: states have been known to misrepresent facts on the ground to justify putting boots on the ground, from the Gulf of Tonkin incident during the Vietnam War to the question of weapons of mass destruction before the 2003 invasion of Iraq. And then there is the issue of classified information, sometimes claimed to justify entry into war on behalf of a citizenry asked to trust their political leaders in a time of alleged national crisis. McMahan strikes the right note in all this, it seems to me: despite these epistemic challenges, “the important question is not whether an *ad bellum* court would be infallible, but whether its judgments could be reasonably believed to be more reliable than those of any state or individual” (250). To buttress its epistemic authority, the court could have “its own research staff, each of whom would be a recognized specialist in the history, politics, or culture of a particular state or region” and who would be “on call” to assist the court in its information gathering and analysis (250).

McMahan also addresses some procedural matters. The court “might not issue a judgment that a war was just but only judgments of unjust or not unjust,” so that the court was not perceived to become a party to any war, even one manifestly, to most informed observers, just. The court’s responsibility would be to help resist unjust wars, not to promote just wars. Judgments could be issued on the strength of a simple majority vote, but a unanimous or near-unanimous vote would produce “a high degree of credence” with conscientious soldiers faced with making an extremely difficult decision. A strongly divided court would have, of course, the opposite effect (252). With all these procedural challenges to be faced, McMahan argues nonetheless that “an international, impartial, and disinterested *ad bellum* court [...] would at last offer a reasonable prospect that a war satisfy not just the letter but also the substance of this traditional just war requirement” (253).

However preliminary and speculative this proposal, McMahan concludes that “we should agree that young people who are commanded by their rulers to risk their lives in order to kill others deserve moral guidance that we know they will not receive from those who seek to use them in this way” (253).

James M. Dubik, Ph.D., Lieutenant General (three stars), U.S. Army, Retired, now Senior Fellow at the Institute for the Study of War, articulates compellingly what is at stake for soldiers in such a context:

War sometimes involves sacrifices made in vain. Losing a battle or engagement, fighting a battle that is unconnected to a larger purpose, being killed or maimed in an unjust, or imprudent, or unnecessary battle or war—any of these can give rise to a sense of betrayal. From any one [of these] can emerge a sense of having one’s life used for no good purpose. Any one of these can give birth to a sense of being suckered into losing or risking the most precious thing a human being has—his or her life—or worse: being suckered into ending someone else’s life for no good reason. This kind of smoldering resentment illuminates a deep moral truth: each of us—even our enemies—is a human being, not an object. As human beings, each of us has moral worth beyond our instrumental utility to a task or to society. Demanding that a soldier risks his or her life for no good reason is to treat that soldier as an object, not a human being. This is, perhaps, the ultimate moral injury, another manifestation of war’s hellishness.⁷

In effect, it is to avert such “ultimate moral injury” that McMahan’s proposal, and my response to it, are addressed.

4. The Role of the Catholic Church

In this final section, it remains to sketch out what contribution the Catholic Church might make in bringing to reality this proposal by Jeff McMahan for preventing unjust war—and therefore war itself. I do so in nine observations. *First*, it should be remembered that since the time of Bishop Ambrose of Milan in the late fourth century and Bishop Augustine of Hippo in the early fifth century, the Church has been the primary carrier and developer of the just war tradition that

informs McMahan's proposal, even as that tradition has been secularized in international law and in the work of moral philosophers like Walzer and McMahan. *Second*, I believe it is fair to say that no ethical tradition gives higher value and authority to personal conscience than does Catholicism, at least in theory. There is a straight line from the primacy of conscience as articulated by Thomas Aquinas⁸ to the *Catechism of the Catholic Church*, which quotes Cardinal John Henry Newman's assertion that conscience is "the aboriginal Vicar of Christ."⁹ According to Aquinas, in James Keenan's paraphrase, "it is better to die excommunicated than to violate our conscience."¹⁰

Third, the Church has in recent years begun the no doubt long struggle to discredit within its own culture what McMahan calls "the doctrine of Permissibility of Participation" by officially endorsing the right of selective conscientious objection, as evident in many documents of the U.S. Bishops during and after the Vietnam War and in the *Compendium of the Social Doctrine of the Catholic Church* published in 2004 during the reign of John Paul II.¹¹ In brief, the Church's teaching on the primacy of conscience in all matters and the Church's teaching on the ethics of war have now been joined. Whether this new position is being taught in Catholic parishes, schools, seminaries, or universities is a different matter. Such a sea change in Church practice, however, is clearly the logical inference of the teaching itself, if that teaching is to be taken seriously.

Fourth, the Catholic Church has become truly global and is the largest religious affiliation in the world, with over a billion adherents, many of whom serve in governments and militaries on six continents. In terms of demographics and centralized authoritative teaching, the Church is positioned like no other human entity to influence world affairs around issues of war and conscience. *Fifth*, the Church has within its ranks untold numbers of experts and scholars in the various disciplines McMahan argues should comprise an *ad bellum* court of international, impartial, disinterested judges. Imagine the congress of such persons that could be assembled just from the hundreds of Catholic universities in the United States alone.

Sixth, I am not arguing, however, that a Catholic version of the world court McMahan proposes would in itself instantiate fully what he has in mind. He explicitly calls for a court made up of diverse perspectives, religious and non-religious. Such a court would have the advantage of speaking at least potentially to all peoples, of all religions and none. If the Catholic Church were to establish its own *jus ad bellum* court, its priority would be to provide guidance to Catholics, especially those serving in the military or in governments. I see it as a matter of institutional integrity that the Church would provide such guidance to its young, as McMahan rightly advises

cannot be expected from governments. A transnational and trans-religious court could and should still be established, along the lines of McMahan's proposal. Two courts might indeed be better than one, although the potential for disagreement and competition cannot be denied. Catholics would then have to decide which authority and which argument were most persuasive. What McMahan says about disagreement within a court would itself be edifying, if only to demonstrate the difficulty of making judgments about the justifiability of a pending or current war.

Seventh, the Church is clearly in a moment of ferment regarding the future of the just war tradition and the practice of nonviolent peacebuilding, as suggested not only by the 2016 conference in Rome but also by the Second Vatican Council's call more than fifty years earlier "to undertake an evaluation of war with an entirely new attitude."¹² That new attitude has remained unspecified, unless it can be identified with the recent popes' increasingly skeptical perspective on the practice of war in the modern world. There has never been an encyclical on just war, nonviolence, peacebuilding, and the role of conscience, but perhaps now is the time.

Eighth, in the Dicastery for Promoting Integral Human Development (formerly the Pontifical Council on Justice and Peace), the Church has in germ the kind of *ad bellum* court McMahan calls for. Perhaps the Council does not itself take on the role of the court, but rather takes responsibility for establishing, staffing, and supervising such a court, whose judges would be drawn from all the relevant disciplines, from many countries and cultures, representing diverse political perspectives—but all united by a critical loyalty to the Catholic just war tradition and its continuing development and real-world application.

My *ninth* and final observation is that when Franz Jägerstätter of Austria became the first officially recognized martyr of the Catholic just war tradition, beatified by Pope Benedict XVI in 2007 as a conscientious objector to the wars of Nazi Germany, his "reference group," over and against the politically compliant churches of Germany and Austria, was the church of the martyrs of the early Christian centuries. His witness was indeed solitary, if not unique.¹³ Perhaps the second miracle needed for his canonization could be that the Catholic Church of the twenty-first century takes the just war tradition as seriously as he did. To Blessed Franz's ancient church of the martyrs could be added a modern court of Catholic moral authority. To paraphrase McMahan in this new context: "we should agree that [Catholic] young people who are commanded by their rulers to risk their lives in order to kill others deserve moral guidance [from their church] that we know they will not receive from those who seek to use them in this way" (253). This would be precisely the

type of moral guidance young Germans and Austrians did not receive from their bishops and pastors in the 1930s and 1940s.

5. A Concluding Counterfactual Narrative

To conclude, let me pose this counterfactual scenario, as a way of concretizing how a Catholic *jus ad bellum* court might play out. Shortly after the close of the Second Vatican Council, let us imagine, Pope Paul VI established a Catholic Court of War and Peace, made up of widely respected jurists and legal scholars, international affairs experts, and moral theologians, with responsibility to evaluate imminent and current wars according to the Catholic just war tradition, which it articulated in newly robust and precise terms. Suppose that by the turn of the millennium, this Court had achieved a substantial degree of credibility in its epistemic and moral authority, as it weighed in on various wars across the globe, whether or not it had definitively prevented or halted any of them.

Suppose that in the run-up to the invasion of Iraq in March, 2003, this court was empowered by the Pope to publish a deeply informed judgment about the justifiability of the proposed U.S.-led war against Saddam Hussein. Suppose further that the court issued a near-unanimous decision that such an invasion would be unjust, for all the reasons that were in fact advanced by Catholic and other just war ethicists at the time, but with the kind of credibility and global influence that not even the Pope on his own, in *ad hoc* commentary, could muster. Suppose, perhaps even more boldly, that selective conscientious objection had been taught in Catholic high schools and colleges throughout the United States. Suppose that teachers, pastors, and even some parents urged Catholic men and women in uniform not to assume that they had no choice but to deploy as ordered, if such orders did in fact come. Suppose that public surveys revealed that a not insignificant number of Catholics, and others as well, were planning to refuse, and that they had the support of many citizens, pastors, and bishops. Would President Bush have proceeded anyway? Suppose that Catholics in the military understood that serving in an unjust war risked not only their lives and limbs, but also their moral integrity, over against “the ultimate moral injury.”¹⁴

But the point, of course, is not to imagine stopping a disastrous war that has already happened. It is to stop the next unjust war. Does anyone seriously doubt that the occasion will arise? Inspired by its own newly robust moral engagement with the problem of war, the Catholic Church could make a significant contribution to world peace—by being true to its own tradition.

Notes

1. Pope Francis, “Nonviolence: A Style of Politics for Peace,” January 1, 2017, https://w2.vatican.va/content/francesco/en/messages/peace/documents/papa-francesco_20161208_messaggio-1-giornata-mondiale-pace-2017.html. The following several quotations all come from this address.
2. Augustine, *Letter 189.6* (to the Roman general Boniface [418 C.E.]), in Louis J. Swift, *The Early Fathers on War and Military Service* (Wilmington, DE: Michael Glazier, 1983), 115. Note that I do not mean to suggest, anachronistically, that Augustine was anticipating Gandhian methods of nonviolent resistance.
3. National Conference of Catholic Bishops, *The Challenge of Peace: God’s Promise and Our Response*, May 3, 1983, <http://www.usccb.org/upload/challenge-peace-gods-promise-our-response-1983.pdf>.
4. “An Appeal to the Catholic Church to Recommit to the Centrality of Gospel Nonviolence,” <http://www.paxchristi.net/news/appeal-catholic-church-recommit-centrality-gospel-nonviolence/5855#sthash.XMzfNxLK.dpbs>.
5. Yitzhak Benbaji and Naomi Sussman, eds., *Reading Walzer* (London: Routledge, 2014), 229.
6. Jeff McMahan, “The Prevention of Unjust Wars,” in *Reading Walzer*, 233–255, at 236. Subsequent citations to this chapter will be indicated parenthetically within the text.
7. James M. Dubik, Foreword: “Expanding Our Understanding of the Moral Dimension of War,” in Nancy Sherman, *Afterwar: Healing the Moral Wounds of Our Soldiers* (Oxford: Oxford University Press, 2015), xv. Italics in original.
8. Aquinas’s fullest treatment of conscience is in *Truth*, vol. 2, qq. 16–17 (Chicago: Henry Regnery, 1953), 300–337.

9. *The Catechism of the Catholic Church*, <http://www.vatican.va/archive/ENG0015/P5Y.HTM>. The article on moral conscience is part 3, section 1, chapter 1, article 6.
10. James Keenan, S.J., “St. Thomas Aquinas and Ethics Today,” *Blackfriars* 75/884 (July/August 1994): 358.
11. See Roger Bergman, “Conscientious Objection to Unjust War: From Augustine to John Paul II,” *Journal of Religion and Society* supplement 14 (2017): 28–43, <https://dspace2.creighton.edu/xmlui/bitstream/handle/10504/109258/2017-7.pdf>.
12. *Gaudium et spes*, 1965, §80, http://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_cons_19651207_gaudium-et-spes_en.html.
13. See my “Toward a Sociology of Conscience: The Example of Franz Jägerstätter and the Legacy of Gordon Zahn,” *Journal for Peace and Justice Studies* 23/2 (2014): 73–97.
14. This paper does not address the question of making selective conscientious objection a legal right. Obviously soldiers would be less inclined to refuse deployment if that meant facing courts-martial. But if the numbers of SCOs were significant and threatened to overwhelm a military court system, the deterrent effect would be substantial, and refusals in even modest numbers would raise unavoidable public concern and debate about the war in question. This subject deserves much fuller treatment than can be given here. But see Andrea Ellner, Paul Robinson, and David Whetham, eds., *When Soldiers Say No: Selective Conscientious Objection in the Modern Military* (Farnham, UK: Ashgate, 2015).