

# The Price of Peace: A Discussion

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## Abstract

It is a pity that *The Price of Peace*, resulting from a prolonged transatlantic dialogue between theologians and academics, should begin with a flawed section on modern 'just war' thinking which fails to recognise the difference between: 1. *war* between states, in which, international law having failed, the objective is to render the enemy powerless so that the victor can dictate what happens next; and 2. *global criminality*, as in the terrorism of gangs like al-Qaeda, which requires to be dealt with by a global police force designed precisely to restore the rule of law for the sake of the common good of all humanity. *Pace* authors like George Weigel, thinking about the justice of armed force cannot remain what it was: it needs to *develop*, as the papacy has long taught, to take full account of the fact that crime is today replacing war as the prevailing international evil.

## Keywords

Al-Qaeda, criminality, George Weigel, just war theory, terrorism.

## I

*The Price of Peace* begins with George Weigel insisting that 'Just War' does not begin from a presumption against war, because it can be a *duty* to pursue a war if it is undertaken for justice.<sup>1</sup> This means that war is 'not inherently suspect morally' (p. 24).<sup>2</sup> Of course this follows from the very notion of a just war. Yet it is itself a suspect argument. Consider a parallel. For Afghan farmers to grow poppies is not inherently suspect morally, and may be a duty if it is the only way they can feed their families. Yet the likelihood that the poppies will lead to the evil of widespread indiscriminate heroin-addiction is so

<sup>1</sup> George Weigel. *The Price of Peace* (Cambridge University Press, 2007)

<sup>2</sup> Weigel makes no attempt to distinguish the precise force of 'moral' and 'morally' in this claim. Since for nine cases out of ten of his examples the term 'moral' can be simply be left out without loss of sense, one wonders what conception of ethics underlies his whole approach to just war. (See below, Note 6)

great that every effort must be made to find another way of sustaining the Afghan people. Similarly with war. If it were a means of justice it could be a duty. But the likelihood, in modern circumstances, of its causing widespread indiscriminate evils is so great that there is also a duty to avoid it wherever possible. In this sense, just war theory today *does* begin from a presumption against war, and Weigel is wrong to sidestep this point.

Yet he is right to make the key distinction between *bellum* and *duellum*, that is between ‘the use of armed force for public ends by legitimate public authorities who have an obligation to defend those for whom they have assumed responsibility’ (p. 24), and ‘the private use of armed force for private ends’ (p. 20). He is also right to say that a just *war* is an effort of statecraft to promote justice in pursuit of *tranquillitas ordinis*, or the tranquillity of order. But what is ‘statecraft’? And what kind of order?

Weigel seems to assume, as his argument proceeds, that statecraft is equivalent to the practice of *states*, and almost inevitably today this slides into the practice of international relations between post-Westphalian sovereign nation-states. But in itself statecraft does not necessarily mean this: it is rather the political management of any human community. Weigel traces his thought back to Augustine: but he does not point out (as Philip Bobbitt does<sup>3</sup>) that for ancient societies statecraft, and therefore justice in war, operated among communities quite different from modern sovereign states. Just war theory did not begin with conflict among nation-states, and will not end there either.<sup>4</sup> (Indeed Philip Bobbitt thinks we are already in the middle of a transition to what he calls ‘market-states’).

A second lack of definition concerns the ‘tranquillity of order’. What kind of order? Weigel insists it must be based on justice, security and freedom. But in that case, Pinochet’s Chile, or the Burma of the generals, or any number of other unjust regimes would be offenders against this order. Trying to get rid of them by force could therefore be a duty in behalf of *tranquillitas ordinis*. But surely using armed force against all unjust regimes would be an offence against such order?

<sup>3</sup> Philip Bobbitt, *The Shield of Achilles* (Allen Lane, 2002), Prologue pp. xxiff

<sup>4</sup> This fact marks a serious shortcoming of James Turner Johnson’s contribution to *The Price of Peace*. He is right in pointing out that recent Catholic and liberal Protestant thinking in the USA has failed to follow the historical tradition of just war theory. But he himself fails to address the need for this tradition to develop in the light of unprecedented twenty-first century conditions. What is clearly needed is for this tradition to develop authentically in order to address situations today, while retaining its underlying validity. This is why it needs something like the criteria for authentic development worked out by Newman for Christian doctrine generally. (On this, see my article on the subject, entitled *International Law: Idea or Reality in Law and Justice* No 154, Hilary/Easter 2005, pp. 35-56).

Finally what do ‘public’ and ‘private’ mean in the definitions of *bellum* and *duellum*? Weigel seems to be saying that the ‘private’ use of armed force in a *duellum* simply means a lack of competent authority. But the unjust side in a just war also, almost by definition, lacks such authority. Does this mean that the unjust side in a just war is necessarily a ‘private’ entity?

## II

Weigel now lists four ‘new things’ which must affect the concept of just war in the twenty-first century (pp. 21-22). They are:

1. the rise of ‘non-state actors’ capable of politically consequential force-projection over long distances;
2. new questions about the locus of war-decision authority, given the fallibility of the UN and other international organisations;
3. new technologies, such as precision-guided systems among the most powerful states, and the rise of suicide-bombing among non-state actors, combining to result in ‘asymmetrical warfare’;
4. the falsity of the post-Westphalian assumption that all states are sovereign and equal, regardless of the nature of their governing regimes.

All of these raise new, difficult questions for just war theory. Weigel outlines his own answers to them by discussing some *defective* responses which need to be rejected (pp. 22ff).

The first defect is to view just war theory as a set of criteria, or hurdles, each one of which must be successively met in turn by the responsible politician before he can go to war. On the contrary, Weigel insists, the politician’s job is first of all to prevent the evil. It follows that there are times when waging war is ‘morally imperative to defend the innocent and to promote the minimum conditions of international order’ (p. 23). Humanitarian intervention is the obvious case. But then humanitarian intervention is not exactly war, for it is ultimately designed to impose the rule of law, rather than compelling an enemy in a two-sided contest to do our will, which is what Clausewitz means by war.<sup>5</sup> Unfortunately Weigel (unlike Clausewitz) does not say exactly what he thinks war amounts to, so it is not clear how he regards humanitarian intervention. Yet today such intervention is the crux of international ‘statecraft’.

Weigel is correct in saying that classic just war theory ‘begins by defining the . . . responsibilities of governments, continues with the definition of . . . appropriate political ends and then takes up the ques-

<sup>5</sup> Clausewitz, *On War* Chapter 1:2. See below, footnote 10.

tion of means'(p. 24).<sup>6</sup> But he is wrong if his claim is that the *in bello* criteria of discrimination and proportionality are somehow subordinate to those of the *ad bellum*. His case is that the *in bello* considerations have of necessity less 'surety' about them than the *ad bellum* ones, because they are more contingent. Only the *ad bellum* criteria 'have some measure of moral clarity' (p. 25). This weird argument betrays the weakness of Weigel's theory of ethics. There is no less clarity about a claim that a certain act of war (say the bombing of Coventry or Hiroshima) entails the intentional killing of the innocent than there is about a claim that a certain authority (say the authority to invade Iraq) is 'legitimate' or 'competent'. What kind of ethical theory denies this? Well, it might come out of a muddle between law and ethics; or between consequentialist ethics and virtue ethics; or between goals and intentions: all prominent muddles in much modern just war theorising. But at any rate, it is a shoddy argument.<sup>7</sup>

Weigel also claims that it is wrong to think of the events of 11<sup>th</sup> September 2001 as 'crimes' rather than 'what moral realism would have instinctively understood (as) . . . acts of war' (p. 26). The argument for saying that 9/11 was an act of war is later amplified by the claim 'that al-Qaeda and similar networks function like states, even if they lack certain attributes and trappings of sovereignty' (p. 28).<sup>8</sup> This is a thoroughly muddled argument, apparently depending not on reason but on the 'instincts' of what Weigel calls 'moral realism'. Given the unclarity, even redundancy, of the word 'moral' in Weigel's argument as a whole, the notion of 'moral realism' is far from clear. Anyhow it is more 'realistic', in the ordinary sense of the term, to see 9/11 as a crime rather than as an act of war. Al-Qaeda is much more like a gang of criminals than it is like a nation-state. It is engaged in a *duellum* not a war. Weigel does not spell out the attributes and 'trappings' of statehood which he admits al-Qaeda lacks, but surely they are fundamental: it does not enter into

<sup>6</sup> I have here twice left out the word 'moral'/'morally', substituting dots instead, to show that the word 'moral' does no significant work in the sentence.

<sup>7</sup> Just war after all begins with a concept of justice; and in so far as the *in bello* criteria are about the justice of the actions to be carried out, they have to be weighed from the very start. The criteria of just war are not like a set of exam papers in which a good mark on one can compensate for a bad mark in another: they are like the ingredients of a cake, which can only exist once all its ingredients are put together in the bowl.

<sup>8</sup> This is a point also made by Bobbitt. But he argues that al-Qaeda is a kind of 'market-state' (op. cit. p. 820). This is surely wrong from his own point of view, in so far as the fundamental objective of the market-state is to 'expand the opportunities offered to the public' (op. cit. p. 222), whereas the fundamental objective of al-Qaeda is to *restrict* public choices. Helena Kennedy, referring to Bobbitt's argument (in *Just Law*, Chatto and Windus, 2004, pp. 44-5) thinks al-Qaeda is more like a multinational corporation than a state; a point which is close to Bobbitt's in so far as Bobbitt himself sees the 'market-state' as a kind of multinational corporation writ large (p. 221). But then a multinational corporation can also be a criminal gang (for example when it stoops to bribery to gain entry into the market).

treaties, have a government, tax its members or claim membership of the United Nations. These are hardly ‘trappings’ of sovereignty in today’s world: they are fundamental to statehood.<sup>9</sup> The mere fact that al-Qaeda can project force over long distances by means of suicide bombings etc. does not begin to show that it is a kind of ‘state’: only that in the twenty-first century we are faced with a new species of criminal gang, bent on using force for its own private ends (including its own private interpretation of Islam). Weigel’s argument certainly *does* ‘fudge’ the distinction between *bellum* and *duellum* (p. 28).

This is an important point because Weigel knows that many just war theorists refuse to recognise al-Qaeda as capable of engaging in war (*bellum*) because it is not a state, and he admits this as an important point of principle (p. 28). But his case appears to rest on nothing more than the notion that al-Qaeda presents ‘a legitimate military target’. But this again is muddled: a criminal gang engaged in *duellum* may indeed be a legitimate target for armed force, but this does not turn its criminality into warfare. This point is important because earlier, as we have seen, Weigel defines warfare (*bellum*) as ‘the use of armed force for public ends by legitimate public authorities who have an obligation to defend the security of those for whom they have taken responsibility’. The trouble is that this definition is just as applicable to armed policemen working against criminal gangs as it is to war.<sup>10</sup> Despite Weigel’s earlier insistence on the distinction between *bellum* and *duellum* his definition does not capture the essence of war as distinct from private gangsterdom.<sup>11</sup> What this amounts to is that ‘asymmetrical warfare’ is better described as using legitimate armed force for policing criminals. Just as al-Qaeda and similar gangs have created an unprecedented species of criminality, based on new technologies and methods of wickedness, it demands new and unprecedented kinds of policing to cope with it.<sup>12</sup>

<sup>9</sup> Bobbitt claims that the network of which al-Qaeda is part has many of the features of a state (loc. cit. p. 820); but as note 8 above points out, even as a kind of market-state al-Qaeda fails the basic test of what it exists *for*. In the absence of the basic objective, the features Bobbitt mentions are mere trappings.

<sup>10</sup> This point was essentially made by Aquinas when he wrote: ‘just as they (sc. those in authority) use the sword in lawful defence against domestic disturbance when they punish criminals . . . so they lawfully use the sword of war to protect the commonweal from foreign attacks’. (*Summa Theologiae* 2a2ae.40.1)

<sup>11</sup> One might have expected so ‘Clausewitzian’ a thinker as Weigel to have recognised that the essence of war is to ‘compel our enemy to do our will’ by making him powerless. (*On War* Chapter 1:2) This of course is quite different from policing criminals, where the object is to promote the rule of law.

<sup>12</sup> Bobbitt admits that it is possible to regard the modern problem as one of policing (pp. 466-7). But he thinks that events in Bosnia have shown this idea to be untenable. Yet it is not clear why the Bosnian debacle implies the end, rather than simply the failure, of policing. I think the weakness of Bobbitt’s argument is that, as he admits, markets are not very interested in justice.

A principle objective of Weigel's argument seems to be to justify preventive attacks by armed force on what he calls (but never defines) as 'rogue states'.<sup>13</sup> In doing so he deliberately muddles the *pre-emptive* use of force with the *preventive* use. Pre-emption, in logic and in law is about the use of force to counter an imminent attack. It is generally accepted that such use is legally and morally licit. Whereas prevention is about the use of force to stop a merely possible future attack taking place. This is generally accepted as morally and legally illicit.<sup>14</sup> But of course the authority to undertake forceful preventive action is one of the defining *differences* between policing and war. To act preventively is *normal* for the police: it is an ordinary part of their job. And this fact rests on the insight that maintaining the rule of law is unambiguously a good objective. Whereas compelling the enemy to do 'our will', which is the aim of warfare, is far from being unambiguously a good thing. The objective of a belligerent state's will in war is not necessarily good at all. Only when its war is *just* will this be the case. This is why preventive action is rightly not permitted either in the ethics or the international laws of war.

<sup>13</sup> It is true that Weigel quotes NSS-2002 in terms of justifying *pre-emptive* action. But this is partly because of a wish to muddy the distinction (well established in law) between action to forestall an imminent attack (pre-emption) and action to forestall a possible future attack (prevention). Weigel tries to bring NSS-2002 into line with genuine just war thinking by substituting talk of 'the first use of armed force' where the original talks of 'pre-emption'. But this does not work because the original itself fails adequately to distinguish between pre-emption and prevention. It rather wants to smuggle prevention in by the back door. The truth is that 'pre-emptive' action against an imminent, clearly perceived threat is allowable in international law. But 'preventive' action, that is action against a possible future threat, is contrary to such law because it is the proper work of the police, because (and only because) there is a mechanism for catching the would-be criminal and with luck bringing him before a judge. International law has no effective machinery for doing this. If it did, this would in itself make the arresting of the offender by soldiers into an act of policing, whatever the official status of the arresting officer is. David Rodin has made this point, when he says that 'if you have reason to fear an unjust attack in the future, you should seek protection by the police or the courts'. (*The Ethics of War* ed. By Richard Sorabji and David Rodin, Ashgate 2006, p. 173). The key point behind this argument is that the difference between war and policing is not one of degree, let alone mere semantics, but is a logical difference between action to win a contest and thereby forcing our opponent to do our will (war) and action to bring an opponent to justice within a framework of established and effective law. My further point is that today the world is hovering, out of necessity, and because of the illegitimacy of making war with modern weapons, on the brink of turning warfare into sheer criminality. 'Asymmetric war' is actually a misleading term used simply to describe a gigantic form of global crime by organised gangs such as al-Qaeda.

<sup>14</sup> Weigel quotes Anne-Marie Slaughter (President of the American Society of International Law) in favour of preventive use of force, for example to prevent a state from acquiring weapons of mass-destruction. But on this side of the Atlantic lawyers tend to disagree with this opinion. See for example Philippe Sands and Helen Law, opinion provided to Greenpeace entitled: *The United Kingdom's Nuclear Deterrent: Current and Future Issues of Legality* p. 6:10. This opinion appeals to the authority of Lord Goldsmith, the UK Attorney General, in support of the distinction between pre-emptive and preventive uses of force.

If preventive action is required to deal with an imminent injustice, this automatically shows that what is needed is police action, not war.

Of course, global policing of criminals also requires a new concept of competent and legitimate authority, because the criminality is now global. Hence, as John Langan says later in the book, Pope John XXIII was right (*pace* Weigel) to talk of the need for a 'universal public authority' (p. 21). The difficulty is how to create it. The world has already taken a few tentative steps in this direction, as the latest verdict from the International Court of Justice about Serbian atrocities in Bosnia shows. But this is only the tiny beginning of a process which has to go much further in directions we can hardly imagine as yet. Bobbitt's idea that the nation-state is on its last legs, and is being replaced by the 'market state' is relevant here.

Weigel says nothing new about 'competent authority' or 'last resort'. But his attempt to show that a document like NSS-2002, which simply identifies pursuit of American interests with what the world as a whole needs, hardly needs elaborating on. For the thrust of genuine just war statecraft in today's world is that pursuit of national interests by the use of national armed forces, even in 'self-defence', is no longer a way to *tranquillitas ordinis*. John Langan accepts this conclusion. Something far more ambitious is required: the replacement of national interests by common human ones – a theme the Holy See is constantly hammering at in the UN and elsewhere, largely because, having no national interests to defend, it can be clear-headed. There are many factors, like global warming and the internet, pushing the world in this direction. Just war thinking is another to be added to the list.

My key point is not new. It is that Weigel is stuck in the old rut of seeing all use of armed force, including its use by al-Qaeda and suchlike, as a kind of warfare. Whereas the true development of the thinking behind 'just war' today leads us to see that the pursuit of justice in today's world, even by the legitimate use of armed force, has to be not by war but by something else: namely global policing. Rupert Smith, Michael Quinlan and others have recognised that today 'industrial war' between nuclear nation-states is virtually impossible. This is a gain of a sort, albeit at the unacceptable price of gross corruption of the national will in the strategy of nuclear deterrence. What none of them has yet gone on to recognise is that 'asymmetrical warfare' or global criminality is really a quite different phenomenon; for which a quite new 'use of armed force for public ends' is needed. (Calling criminal gangsterdom 'asymmetrical warfare' is just a lazy way of reverting to the familiar categories of the past instead of recognising the novelty of the twenty-first century dilemma). Anyhow, this new use of armed force must not be

designed to render the enemy powerless so that he has no option but to do our will (as in genuine warfare), but to force the enemy to obey the law by arresting, convicting and putting him out of our harm's way. Mary Kaldor says much the same thing in her essay. To be able to do this on a global scale is perhaps unimaginable today. Yet it is a necessity, just like solving the problem of global warming. Without this development (which is a genuine *development* of just war tradition, in Newman's sense of the term) mankind is probably bent on suicide. We had better start thinking about how to do it – soon.

### III

The dialogue between the classic just war tradition and Philip Bobbitt's analysis of the future of states is of great interest. (Philip Bobbitt, *The Shield of Achilles*, Allen Lane, 2002 *passim*). In so far as many of the contributors to *The Price of Peace* continue to think in terms of nation-states, they are probably on the wrong lines if Bobbitt is right to point to a crisis of the nation-state. He sees a world of 'market-states' already emerging to replace them. Instead of existing only as long as they can preserve and defend a certain national territory (like nation-states), market-states exist primarily to promote choices and opportunities for their people. In such states, a delimited territory is replaced by an expanding market. And promoting the virtue of justice in international relations (as with classic just war theory) is replaced by promoting a menu of different values, from which people are free to choose.

But thinkers like Weigel, John Langan, Terence Kelly and Mary Kaldor (in *The Price of Peace*) are right to point to the continuing need for justice in the dealings between states (including justice in war). The problem is that the two claims about contemporary states are not really compatible with each other. For the market state is not really interested in justice. Thus it is concerned with international law only in so far as it consists of 'the practices of the society of states' (*op. cit.* p. xxix). In other words international law is law only as far as the states agree to regard it as such. Such 'law' is not designed for the cultivation of the virtue of justice, as genuine law is: rather it is a set of rules agreed to by market-states to enable them to further their own interests, i.e. to enlarge the range of choices open to their publics, which is the fundamental purpose of market states. Whereas the key requirement for a genuine rule of law on a global scale is that it should be possible for definitive verdicts to be issued and enforced. As John Langan points out, this 'does not presuppose the prior transformation of states into morally or ideologically purified entities. Rather, it commends the establishment of an authority



capable of adjudicating disputes among states and of enforcing its decisions'.<sup>15</sup>

The trouble with market states is that, in the absence of any criteria for distinguishing good from bad choices, simply increasing the choices open to the public is a silly idea. Bobbitt's point can be considered, for example, in the light of the current debate about food-labelling and the role of Macdonalds and other food retailers. It is clearly silly to think about increasing the choice of food available to the public without first thinking about what is good food. Now practically by definition good food is food that nourishes people: that is its basic purpose. So offering more choice of foods irrespective of their nutritional value is silly.<sup>16</sup>

It would make sense only if it was impossible to tell good food from bad, i.e. what nourishes people from what does not. Similarly, the promotion of the *virtues* is good for society: it is what nourishes human beings as social animals. Increasing the choice of 'values' available for people to adopt as social beings, without distinguishing the virtues from the vices among these values, is also silly. Yet, if Bobbitt is right, this is what the objective of the market-state is. Hence the market-state's lack of interest in justice and inter-state law, or in statecraft as the pursuit of justice.

Bobbitt insists, possibly rightly, that a world of market-states will not be a world free of wars; only that its wars will be of a new kind. But he does not ask himself the key question: would these be *just* wars? Now a just war, that is a war fought to promote justice, will be a war that in some way, however far-fetched, *nourishes* the global<sup>17</sup> community. For that is the value of justice as a virtue: it nourishes all of us. Just as it is a silly idea to think of widening the choice of foods without regard to their nourishing ability, so too with choices of what we tend to call 'values'. It is a silly idea to think of them without asking ourselves: are they 'nourishing' values or the reverse? This is why the tradition of thinking about just wars is crucial, and cannot be got rid of without disaster, since market states are not interested in nourishing the virtues like justice, only in promoting society's choices. But to do this today means that we have to think differently about the future of states. What is needed, if what I have said is right, and Bobbitt is also right, is replacement of the obsolescent nation-state system with a belief in the common

<sup>15</sup> The Price of Peace p. 224.

<sup>16</sup> Of course, in so far as eating is a pleasure, some food will be simply pleasurable rather than physically nourishing. But then legitimate pleasure in due measure is itself a nourishment for the overall well-being of the eater.

<sup>17</sup> We can't say 'international community' here, since nationality is not what a society of market-states is about. Hence I speak of 'global' community instead. For some theological reflections on the implications of this thought, see Timothy Radcliffe OP, *What is the Point of Being a Christian?* (Continuum, 2005) chapters 8 – 11.

good of all humanity, together with a rule of law for this community which in turn implies the capacity for enforcing verdicts against breaches of this law, and a police force able to catch the gangsters like al-Qaeda who disobey it. The problem is: how to get to this point?

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