

What Do We Want from the Just War Tradition? New Challenges of Surveillance and the Security State

Studies in Christian Ethics

2014, Vol. 27(1) 50–62

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DOI: 10.1177/0953946813509337

sce.sagepub.com



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Abstract

The nature and scope of government surveillance have intensified debates about liberty and security in a post-9/11 world. Critics of the just war tradition argue it is not able to constructively address these new challenges. Defenders often simply re-affirm its various criteria in making retrospective judgments or clarifying principles. By contrast, this article argues that our political moment—marked by the arbitrary exercise of power, the prospect of permanent war, and the rapid speed of global politics—reinforces the need to frame just war thinking within a constructive account of statecraft and practical reasoning. In particular, I highlight moral (rather than simply legal) dimensions of authority and intention which reveal a fundamental question about what we want from the just war tradition in relation to democratic social criticism and the possibility of political morality.

Keywords

Augustine, counterterrorism, domination, empire, ideal theory, just war, security, surveillance

‘In this twelfth year of our emergency, something has gone badly wrong with the national morale. There are cultured Americans who have lived so long in a privileged condition of dependence on the security state that they have lost control of the common meaning of words.’¹ So wrote my fellow American, David Bromwich, in the *London Review of Books*, appropriately in the summer’s 4th July issue. Bromwich portrayed various characterizations of Edward Snowden as slanders of the establishment, but took particular exception to claims that he is a ‘narcissist’. Apart from challenging such descriptions,

1 David Bromwich, ‘Diary: In Praise of Edward Snowden’, *London Review of Books* 35.13 (4 July 2013), pp. 34–35, at p. 35. On the morality of whistleblowing, see Rahul Sagar, *Secrets and Leaks: The Dilemma of State Secrecy* (Princeton, NJ: Princeton University Press, 2013).

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Bromwich criticized a tendency in American public discourse to allow preoccupation with personalities to obscure the moral and legal implications of a security state creeping toward permanent war.² On this view, our ‘long war’ and adapted attachment to inviolable security itself invites narcissism across party lines, tempting the powerful to pursue unjust ends by unjust means against overblown threats in the name of a global common good.³ Or, as Bromwich bluntly put it, the ‘surveillance-industrial complex has brought home the intrusive techniques of a militarized empire, with its thousand bases and special-ops forces garrisoned in scores of countries’.⁴ To these bases and forces, we might add the trillions of dollars spent on private contractors, dataveillance, and the massive restructuring of American government in support of the Global War on Terror—a government that now spends more than \$10 billion a year just to keep its secrets secret, with an estimated 854,000 people holding top secret security clearance.⁵

Governments require secrecy just as nations require security, but the scale of these developments poses threats to the rule of law, creative international diplomacy, and electoral accountability. For Bromwich, these techniques and their administrative guardians constitute a ‘trespass by government against the people’ and ‘can only be practiced or accepted by people who have given up on every element of liberal democracy except the ideas of common defence and general welfare’.⁶ In short, he argues that a combustible mix of fear, exceptionalism, and technological power threatens the character of my republic, not to mention its authority and those non-Americans forced to endure the terms of its unilateral peace.⁷ His analysis is not unlike G. E. M. Anscombe’s argument about the cultural effects of war and the distortions of truth in ‘the interests of the state’ in 1939 England.⁸ A just cause—whether it be fighting terror or defeating Nazism—is a necessary but not sufficient condition of just warfare.

Bromwich’s commentary, and the responses to it, reflects the left’s uneasy conscience in debates about American power, especially power beyond the control of law, pitting strategic deterrence against rights-based jurisprudence. This polarization can invite rare

2 On the militarization of American politics, see Andrew J. Bacevich, *Washington Rules: America’s Path to Permanent War* (New York: Henry Holt & Company, 2010).

3 See, for example, John Mueller, *Overblown: How Politics and the Terrorism Industry Inflate National Security Threats, and Why We Believe Them* (New York: Free Press, 2006).

4 Bromwich, ‘Diary’, p. 34.

5 Dana Priest and William M. Arkin, *Top Secret America: The Rise of the New American Security State* (New York: Little, Brown and Company, 2011), pp. 24, 158. Priest and Arkin detail the growth and complexity of the many layers of America’s counterterrorism apparatus, or what they call ‘supersize.gov’ (p. 79). They found that ‘we need it because you never know is the answer to many questions about the size, expense, and effectiveness of Top Secret America’ (pp. 149–50; original emphasis).

6 Bromwich, ‘Diary’, p. 34.

7 Note the ambiguity of the official name used by the US government for the War in Afghanistan: ‘Operation Enduring Freedom’, initially called ‘Operation Infinite Justice’.

8 G. E. M. Anscombe, ‘The Justice of the Present War Examined’, in *The Collected Philosophical Papers of G.E.M. Anscombe*, vol. 3, *Ethics, Religion and Politics* (Oxford: Basil Blackwell, 1981), pp. 72–81, at p. 80.

agreement between libertarians, realists, anarchists, human rights activists, just war thinkers, and end-times Christian fundamentalists, many of whom share Bromwich's assessment of the corrupting effects of a growing security state, albeit for different reasons. Despite recent efforts by the Obama administration to restore public trust with promises of greater transparency, legislative oversight, and judicial review, debates continue along with the steady drip of new revelations about the National Security Agency (NSA), an agency larger than the CIA and FBI combined. These include its efforts to break widely used encryption codes and an internal audit which found the NSA violated privacy rules protecting Americans and others on domestic soil 2,776 times over a one-year period.⁹ Even the Foreign Intelligence Surveillance Court has found the agency misrepresents the scope of its digital collection programs.¹⁰ What might be said to unite its disparate critics is a classical republican concern that transcends liberal concerns for privacy rights or the attribution of personal malice.¹¹ The arbitrary exercise of power, resistant to checks and balances, is a defining feature of domination over time that renders authorities no longer worthy of trust. It risks turning citizens into subjects and non-citizens into *de facto* militants, not to mention houses of worship into agents of state surveillance as has been alleged in both New York and London.¹² Civic republicans do not oppose liberty and security, but they question what sorts of accountability structures ensure a liberty worth the name, especially when the Authorization of the Use of Military Force enhances executive power and bypasses formal declarations of war. Trust is a neglected topic in Christian political thought. Most of my Princeton undergraduates, trained in the arts of suspicion, attuned to power but not authority, flock to courses on religion and politics even though, or perhaps because, they prefer to locate their identity in humanitarian spaces they think are beyond both religion and politics.

Unlike Bromwich and my elite undergraduates, however, many of my fellow citizens appear resigned to these state surveillance practices as inevitable features of a post-9/11 networked world. Indeed, they find it difficult to see how the technologies they enjoy might threaten rather than empower democratic freedom and peace.¹³ Such is the grip of what Oliver O'Donovan years ago identified as the 'inner fortress of deterrence-theory, its peculiar assumption that the deterrent state can transcend the belligerent content of its

9 Nicole Perloth, Jeff Larson and Scott Shane, 'N.S.A. Able to Foil Basic Safeguards of Privacy on Web', *The New York Times*, 6 September 2013, A1, and Charles Savage, 'N.S.A. Often Broke Rules on Privacy, Audit Shows', *The New York Times*, 16 August 2013, A12.

10 Charles Savage, 'Top-Secret Court Castigated N.S.A. on Surveillance', *The New York Times*, 22 August 2013, A1.

11 See Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Clarendon Press, 1997). Pettit helpfully distinguishes republican emphases on non-domination from liberal emphases on non-interference.

12 On militants, see Jo Becker and Scott Shane, 'Secret "Kill Lists" Prove a Test of Obama's Principles and Will', *The New York Times*, 29 May 2012, A1. On mosques, see Adam Goldman and Matt Apuzzo, *Enemies Within: Inside NYPD's Secret Spying Unit and Bin Laden's Final Plot Against America* (New York: Simon & Schuster, 2013).

13 See David Rieff, 'Why Nobody Cares about the Surveillance State', *Foreign Policy*, 22 August 2013, and 'The Singularity of Fools', *Foreign Policy*, 29 April 2013.

threats in the pacific intent of its threatening'.¹⁴ O'Donovan helpfully locates this idea within an idealist tradition, albeit a 'tough-minded mutation of pacifism, a pacifism transformed by a technological and historicist vision of human progress'.¹⁵

John Rawls, whose own statements on war seem to confirm O'Donovan's analysis, called Augustine one of the two 'dark minds in Western thought'.¹⁶ Augustine was a culture warrior surrounded by violence, impressed by the opacity of human affairs. He was better at psychologizing injustice than historicizing it, placing severe constraints on his political imagination and capacity to see the contingency of certain practices (like slavery). His pessimism can be exaggerated, and recent scholarship has explored his own efforts at legal and political reform as Bishop and counselor to magistrates.¹⁷ Nevertheless, Augustinians, devoted to the intensity of human sin, are adept at puncturing the illusions of idealism and deflating the pretensions of those who try to escape what Reinhold Niebuhr would call the ironies of American history. They tend not to be impressed by exaggerated claims of novelty in human affairs, including 'postmodern' or 'full spectrum' or 'virtual' war. Rome will never get better. Politics is always a state of emergency. In responding to the shattered ideals of Rome by warning Christians not to make the empire their religion, Augustine put distance between political life and what we most care about in this wicked world. 'Let such evil deeds be examined naked', he tells us.¹⁸ The great temptation of politics is thinking you have direct reference to God's purposes, or any science of human nature that makes moral action transparent to itself, a theme powerfully recalled in Lincoln's *Second Inaugural Address*. Modern Augustinians, like Niebuhr, finding Augustine's realism too severe, and drawing upon Protestant emphases on the malleability of culture and responsibility for our political arrangements, reconstructed his theology to align invocations of the 'image of God' and 'original sin' in positive relation to democratic language about the dignity of the individual and the need for a limited, humbled state. Such a state is responsive to legitimate human desires and needs (even, for Augustine, a properly ordered desire for glory and security). The problem lies in the tendency for our desires to become inordinate and thereby license domination.¹⁹ To recast Bromwich's interpretation in this Augustinian idiom, a lust for security and secrecy has become the lust that dominates America and its idolatrous politics of dominating others. Lust sponsors injustice and betrays our disordered loves in the face of radical contingency and human vulnerability. Indeed, the first ten books of Augustine's *City of*

14 Oliver O'Donovan, *Peace and Certainty: A Theological Essay on Deterrence* (Grand Rapids, MI: Eerdmans, 1989), p. 20.

15 O'Donovan, *Peace and Certainty*, p. 28.

16 John Rawls, *Lectures on the History of Political Philosophy* (Cambridge, MA: Harvard University Press, 2007), p. 302. The other dark mind, according to Rawls, is Dostoyevsky.

17 See, for example, Robert Dodaro, 'Between Two Cities: Political Action in Augustine of Hippo', in J. Doody, K.L. Hughes and K. Paffenroth (eds.), *Augustine and Politics* (Lanham, MD: Lexington Books, 2005), pp. 99-115.

18 Augustine, *The City of God Against the Pagans* (trans. R. W. Dyson; Cambridge: Cambridge University Press, 2008), 3.14.

19 See Eric Gregory, *Politics and the Order of Love: An Augustinian Ethics of Democratic Citizenship* (Chicago, IL: University of Chicago Press, 2008).

God can helpfully be read as an indictment of the violence of imperial desire for infinite security and prosperity. The *Pax Romana* was a lie built on human misery and constant war for control of the world and the self: both terrorism and deterrence have their Latin root in fear. Many early Christians associated secrecy and empire with the false hope of omnipotence, omniscience, and *securitas* in this world.²⁰ *Firma securitas* is possible only in God who is the source of our desires, the One alone who, with the Psalmist, we safely ask, ‘Search Me, O God, and Know My Heart’ (Ps. 139:23). Indeed, for Augustine, our insecurity is a blessing from God to seek ‘where peace is most full and certain’.²¹

Augustine’s distinctions may furnish a Christian vision of secularity. But some of the more interesting social critics in American life today, both religious and secular, expose the religiosity of our politics beyond the routine displays of civil religion that excite cable news and jurisprudence. Rather, what these critics diagnose is the enchanting patterns of group identity, violence, and sacrifice that suggest the modern nation-state occupies ‘the place of the sacred for its citizens’.²² The nation-state and its wars provide meaning for a world that may profess, but no longer experiences, the biblical God as a divine presence. Heralds of cosmopolitanism and globalization may tell us that the nation-state is fading, just as liberals claim religion belongs to our solitude, but these critics argue our ideal theories are too often blind to realities of passionate and enchanted politics.

The paradox of empire, especially an empire that refuses to see itself as one by claiming necessity, is that great power co-exists with existential insecurity, tempting greater assertion of power without constraint and reluctance to submit to international norms. Now, it is argued, the promise of remote-control technologies like drones continue to militarize American foreign policy and allow the United States to exercise domination on the cheap, ‘quickly, secretly, and briefly ... for a country tired of a decade of war’.²³ Apart from familiar *in bello* considerations of discrimination and proportionate harm, and the failure to acknowledge the loss of non-American lives, arguments about their counterproductive repercussions helpfully reveal the broader geopolitical context in which moral arguments about the use of particular technologies must be attentive, regardless of whether or not any one tactic is intrinsically unjust. Actions reveal intention and weapons express attitudes. Our policies and our budgets reflect our loves.

Just war thinkers might cheer the prominence of their language in debates about drones, even as they recognize the potential dangers of its success and routine appeal. Even realists now recognize the force of moral argument in international affairs. Bromwich’s point, however, belies a larger argument about the fate of language, especially moral language during crises of authority and periods of rapid change. Moral

20 See John T. Hamilton, *Security: Politics, Humanity, and the Philology of Care* (Princeton, NJ: Princeton University Press, 2013).

21 Augustine, *City of God*, 19.10.

22 Paul Kahn, *Political Theology: Four New Chapters on the Concept of Sovereignty* (New York: Columbia University Press, 2011), p. 2.

23 David E. Sanger, *Confront and Conceal: Obama’s Secret Wars and the Surprising Use of American Power* (New York: Broadway Paperbacks, 2013), p. 420. See also the Stanford/NYU report: www.livingunderdrones.org.

language, as a tool of domination, can be appropriated for ideological purposes that mask motives and actions. It is a theme that reminds us of many dystopic novels that now enjoy a revival among the sad, suspicious, and disappointed. Augustine, who longed for a day when language would give way to complete transparency of the heart, was a master analyst of the way words can both distort or communicate understanding. The argument is a familiar one in theological circles, especially for those schooled in the master narratives of modernity criticism that have played an important role in recent Christian ethics. We have lost our way, including our way with words and their meanings in this age of technique and so-called tradeoffs between liberty and security. To claim we have lost our way, however, implies some fugitive capacity of resistance to ideology, some discipline of tutored judgment, of practical reasoning despite ourselves.

Just war thinking, committed to a *moral* realism, relies on this resilient capacity, and its renaissance is a remarkable feature of political discourse in the past fifty years, particular in the university and the military. Ironically, its defenders now find themselves in a minority in Christian ethics, burdened by a supposed choice between faithfulness and responsibility. Yet polls in the United States suggest few Christians of any stripe make judgments about war in light of church teachings or religious beliefs. In March 2003, for example, during the week before American hostilities in Iraq, only 10 percent of Americans considered religion to be an important influence on their opinion about the war. Only 21 percent who attended religious services regularly reported their clergy had taken a stand for or against the war.²⁴ And, at least in the United States, there is a remarkable silence of the churches in debates about surveillance that primarily pit defenders of the security state against the legal rhetoric of the American Civil Liberties Union (ACLU). For its critics, the just war tradition has run its course. Like liberalism or the nation-state, to which it is often attached, it may have performed its historical duty, but it is now exhausted when confronted with transnational enemies without a fixed address. It offers no hope, no resistance to our tragic dilemmas of counterterrorism.

Just war thinking is not a technology or a decision machine, though it tries to keep pace with technologies and the speed of contemporary politics. It often uses a method of casuistry, schooled by virtues like prudence rather than vulgar calculation in the difficult task of discerning the good in situations of conflict. But it is also a way of imagining the world; or, better still, it is a way of imagining the moral purposes of politics by recognizing both its limits and possibilities. As a political morality, it seeks greater clarity in our use of words, funded by distinctions thought to track morally relevant aspects of describing human action truthfully. For example, and perhaps most classically, defenders of the tradition have sought to distinguish killing from murder. This fundamental distinction reveals a pattern of thinking characteristic of just war thinking in its opposition to both pacifism and realism. But the tradition is more than an ethic of killing, narrowly construed. For example, it also attends to questions of national interest, international order, and strategic assessment of military

24 The Pew Forum on Religion and Public Life, 'Americans Hearing about Iraq from the Pulpit, but Religious Faith not Defining Opinions', 19 March 2003, <http://www.pewforum.org/files/2003/03/iraq-war.pdf>.

action.²⁵ War and the conduct of war are subject to moral (and legal) evaluation, tacking between principles and cases in order to bring the use of force under discipline of practical reason in the service of political goods like order, justice, and peace. Such reasoning admits novelty, but it also plumbs continuity in our imperfect reflection on the means and ends of war.

We ask a lot of the just war tradition in helping us to clarify and to maintain the integrity of these contested words, and significantly, permit their use and application in ways that make going to war and fighting justly possible within the ambiguities of history. Truthful speech is ordered toward justice, and our terminological disputes often reveal substantial disagreement. The just war standards of political morality, albeit variously defined, are high. But they are not insurmountable. They enjoin moral absolutes, but never idealize states of affairs. Just war thinking requires judgment, and judgments are always faced with novel technologies, uncertain consequences, multiple new actors, and changing legal structures. As a way of thinking and speaking, one virtue of the tradition is the way it has generated concepts that help us understand our disagreements about such judgments in varied political contexts. In our day, for example, we witness dialectical shifts within just war reasoning from notions of retribution to self-defense to protection of persons, and new calls for *ius post bellum*.²⁶ This plasticity, like most traditions that admit development of doctrine, is ripe for criticism and transgression. Charges of hypocrisy, co-option, false consciousness, and moral laxity abound. Rather than enrich practical reasoning and strengthen commitments to justice, the tradition is thought to normalize violence. It would require empirical study to determine its effect on institutions and norms that constrain both when and how wars are fought since 1945. But relative to other patterns of Christian reasoning, I think we would be hard pressed to identify an area where at least the articulation of Christian norms have so penetrated our legal and social life. Unlike sexual ethics or bioethics, classical just war reasoning continues to provide the categories for the morality of war. The violation of its principles or disagreement about them does not undermine their validity. In fact, their validity is presupposed by such charges of rationalization.

25 See John Kelsay, 'Just War Thinking as a Social Practice', *Ethics & International Affairs* 27.1 (2013), pp. 67-86. For Kelsay, just war thinking addresses a wide range of moral and political values, including 'the impact on a state's ability to secure the welfare of its own citizens, the impact of various courses of action on international order, and military and strategic assessments related to the probability of success' (p. 86 n. 35). He contrasts this approach to 'more narrowly moral' accounts that privilege the issue of killing or injury (p. 86 n. 35). His essay details how the just war framework has been used during different periods of the war in Afghanistan.

26 In a forthcoming essay, 'Good Samaritans, Religious Violence, and Humanitarian Intervention', in Robert W. Jensen and Eugene B. Korn (eds.), *Zionism, Religion and Violence: Christian and Jewish Perspectives* (Eugene, OR: Wipf & Stock, forthcoming), I argue that humanitarian intervention is a paradigmatic rather than exceptional case of just war reasoning. I also raise a neglected debate about whether or not a *justified* intervention implies a moral obligation or mere permission to intervene. I argue it implies a moral obligation given the normative status of moral conclusions.

Benevolence alone does not provide security in a fallen world. The just war tradition provides a grammar for moral reflection and deliberation that might foster prudential and just statecraft, even as we try to find ways to speak about the use of force in the twenty-first century. You don't have to read Foucault or Agamben to be skeptical when President Obama and his advisors tell us that he has been consulting the wisdom of Augustine, Aquinas, and Niebuhr in pursuing his counterterrorism strategy.²⁷ But, as he argued in his 2009 Nobel Lecture, laced with language of necessity and folly, meeting the challenges of asymmetric conflict 'require us to think in new ways about the notions of just war and the imperatives of just peace'.²⁸ Since the meaning of these words are not self-evident, debate about their application can be found in the most technical parts of analytic philosophy, international law, and at its best, public argument about particular wars among citizens, soldiers and politicians.

In fact, one important debate today involves which actions are properly described as warfare rather than law enforcement. Can there be a 'war on terror'? Who is a criminal and who is an enemy? Who is a combatant and noncombatant? When is surveillance part of warfare and when is it a normal state function? What degree of risk are we willing to impose and willing to accept in war? When might cyberattacks implicate *jus ad bellum*? How can there be moral argument in real time about actions that by their very nature are concealed from public deliberation? Are these simply decisions to which citizens must defer to their representatives? Are we limited to retrospective judgments about the use of deadly force, 'a moral argument with historical illustrations', to borrow from the subtitle of Michael Walzer's prominent book, *Just and Unjust Wars*?²⁹ Does this simply forfeit our moral agency in the face of insecurity?

To my mind, these questions raise two of the more pressing (and undertheorized) aspects of the tradition in need of substantive moral consideration rather than simply procedural legal analysis: the categories of proper authority and right intention. In particular, how should we judge claims that the exercise of American power vitiates professed appeals to authority and right intention? What are the standards for such an assessment and how do they relate to the actual condition of global politics today? How do we distinguish imperfection from the perversion of justice? To raise each of these questions in relation to our current situation, however, invites a more foundational question. What do we want from the just war tradition?

What Do We Want from the Just War Tradition?

This is a foundational question, not unlike ongoing debates in philosophy about what we want from a theory of justice. In fact, my question is inspired by Amartya Sen's

27 See, for example, David Luban, 'What Would Augustine Do? The President, Drones, Just War Theory', *Boston Review* (6 June 2012), <http://www.bostonreview.net/david-luban-the-president-drones-augustine-just-war-theory> (accessed 13 August 2013).

28 'Barack H. Obama—Nobel Lecture: A Just and Lasting Peace', http://www.nobelprize.org/nobel_prizes/peace/laureates/2009/obama-lecture.html (accessed 13 August 2013).

29 Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (New York: Basic Books, 1977).

challenge to dominant forms of political theory in the Kantian tradition. Sen wants to move from a classic ‘transcendental’ approach that identifies institutions of perfect justice to a ‘comparative’ approach which ranks alternative arrangements in order to advance justice or, at least, prevent severe injustice.³⁰ As he puts it elsewhere, central to any theory of justice should be ‘the identification of redressable injustice’.³¹ In brief, more Adam Smith, less John Rawls. Sen’s disputed contrast and the debate about what is now called ideal and non-ideal theory recall classical discussions of theory and practice that would take us back to Plato’s *Republic*, and in our time, can be found in arguments made by figures like Bernard Williams and Jeremy Waldron about the ‘circumstances of politics’.³² They also find analogies in theological ethics, particularly in terms of how eschatology bears upon different views in ethics, law, and politics.³³ I suspect here we enter bedrock arguments about the nature and character of both statecraft and law that divide Christian pacifists and adherents of the just war tradition despite recent ‘meta-theory’ efforts to find convergence in a presumption against violence rather than a presumption against injustice. I find such efforts unconvincing.³⁴ They also contribute to the vagueness of recent ecclesial teachings on war, and particular wars. To be sure, a heuristic value of the tradition is the way it illuminates both fundamental theological disagreements about Christian identity and distinctive patterns of moral reasoning found in the various Anabaptist, Lutheran, Calvinist, and Roman Catholic treatments of war.³⁵ My purpose, however, is not to rehearse this ground, other than to suggest that Christians have their own reasons to worry about what Sen calls the transcendental approach and the assumptions of an ideally just society.

Augustine is often credited with being the father of the just war tradition, but his wisest defenders admit there is no such thing as a ‘just war’, even if resort to war can be justified. Our virtues and judgments can only be incomplete, and theologians will have a different story to tell than Sen about the sources of incompleteness. In *The Faces of Injustice*, Judith Shklar ranks Augustine among a rare set of thinkers who challenge

30 Amartya Sen, ‘What Do We Want from a Theory of Justice’, *Journal of Philosophy* 103.5 (May 2006), pp. 215-38.

31 Amartya Sen, *The Idea of Justice* (Cambridge, MA: Harvard University Press), p. vii.

32 Jeremy Waldron, *Law and Disagreement* (Oxford: Oxford University Press, 1999); Jeremy Waldron, ‘Political Political Theory: An Inaugural Lecture’, *Journal of Political Philosophy* 21.1 (March 2013), pp. 1-23; and Bernard Williams, *In the Beginning was the Deed: Realism and Moralism in Political Argument* (Princeton, NJ: Princeton University Press, 2005).

33 Robert Adams, for example, compares James McClendon’s pacifist critique of Reinhold Niebuhr to disputes in moral philosophy about the role of ideal theory. See Robert Merrihew Adams, *Finite and Infinite Goods: A Framework for Ethics* (Oxford: Oxford University Press, 1999), pp. 222-23. Adams inclines ‘more to Niebuhr’s side of this dispute’ (p. 222).

34 For a helpful discussion of the issue, see Helmut David Baer and Joseph E. Capizzi, ‘Just War Theories Reconsidered: Problems with *Prima Facie* Duties and the Need for a Political Ethic’, *Journal of Religious Ethics* 33.1 (March 2005), pp. 119-37.

35 See, for example, Jeffrey Stout, ‘Justice and Resort to War: A Sampling of Christian Ethical Thinking’, in J. T. Johnson and J. Kelsay (eds.), *Cross, Crescent, and Sword: The Justification and Limitation of War in Western and Islamic Tradition* (New York: Greenwood Press, 1990), pp. 3-33. Stout also rejects the presumption against violence.

normal approaches to justice by beginning with an ‘unusually enlarged sense of the various forms of injustice’, and so exposing ‘hidden ignorance’ and ‘false intellectual self-assurance’ that assumes we might fulfill the demands of justice.³⁶ Reinhold Niebuhr proposed what he thought he found in this Augustine: a vision of *relative* justice which combines a Lutheran insistence on the impossibility of achieving an ideal society and a reformer’s desire to take responsible action against evil. Augustine’s famous account of the wise judge in Book 19 of the *City of God* was Niebuhr’s paradigm for statecraft that requires choosing between lesser evils in a fallen world. Political facts, he thought, require mournful choices in the face of inevitable sinning, a position that led him to reject traditional just war prohibitions. Indeed, referring to Nazism, Niebuhr counseled, ‘we ought to do whatever has to be done to prevent the triumph of this intolerable tyranny’.³⁷ Critics here find reasons to assume non-ideal theorizing perpetuates the rewards and incentives of the status quo, endorsing consequentialism in the service of existing power structures. This is why pacifists such as Stanley Hauerwas often appeal to just war claims in trying to help the state be less violent and ‘to ask the church to at least live up to the standards of a just war church that might prophetically challenge the nationalist and survivalist assumptions of our society’.³⁸

While our field needs more attention to words such as *regret*, *helplessness* and *lament*, not to mention liturgical practices that address them in times of war for returning soldiers, I worry about the many ways this version of the Augustinian tradition has abused lowering expectations in the name of realism and non-ideal theory. It tempts just warriors to lament injustice just enough to endorse it as a mournful necessity in a complex world. It is a good thing that Thomists continue to press Niebuhrians to articulate principles with determinate content. A better realism is not acceptance of power politics, but a pastoral sensitivity to our conditions and its prospects in this ‘toilsome pilgrimage’ that still admits a semblance of peace.³⁹

To the extent that the just war tradition is a tradition of moral argument and a practice of moral imagination, to ask what we want from it is to ask what we want from the distinctive place of moral reflection in politics. Ironically, Sen’s alternative to much of modern moral and political theory also reflects its central motivations: to direct our deliberation and provide guidance for action. I suspect that is what most people, religious and secular, want from the just war tradition: a practical rule-based morality that provides a political framework for resort to war (*jus ad bellum*) and for the means of war (*jus in bello*) in order to secure particular judgments for us. Many Christian just war thinkers rightly resist the reduction of just war reasoning to a checklist of deontic norms, let alone dictates of positive law, losing the longer aspirational train of thought that motivates its reasoning and informs a prudential morality uniting *ad bellum* and *in bello*

36 Judith Shklar, *The Faces of Injustice* (New Haven, CT: Yale University Press, 1990), p. 20.

37 Reinhold Niebuhr, ‘To Prevent the Triumph of an Intolerable Tyranny’, *Christian Century* 57 (18 December 1940), pp. 1578–80, at p. 1580.

38 Stanley Hauerwas, ‘Epilogue: A Pacifist Response to the Bishops’, in Paul Ramsey, *Speak Up for Just War or Pacifism* (University Park, PA: Pennsylvania State University Press, 1988), p. 151.

39 Augustine, *City of God*, 11.31.

considerations. Articulating these features of the tradition and clarifying the nature of political morality is thought to illuminate *options* for morally justified action. Its work is explanatory and justificatory. It is descriptive and sensitive to facts, but it is not prescriptive. Concrete political judgments or institutional designs are the specific burden of rulers and policy-makers with relevant information about complex risk assessments. It is their vocation to exercise judgment in these complex environments, not the moral expertise of an ethicist.⁴⁰

I am sympathetic to this familiar deference, shaped not only by epistemic considerations but recognition of the specific responsibility and authority of office holders. In a recent work, *Killing in War*, philosopher Jeffrey McMahan questions the traditional deference in specific relation to the moral duties of soldiers. He writes,

in order for soldiers to be objectively justified in deferring to the authority of their government in resorting to war, there must be good reason for them to believe that their government, or the relevant government institutions, are actually fulfilling the task of scrupulously evaluating potential wars as just or unjust.⁴¹

In his judgment there might be governments that are more morally reliable than private conscience, but ‘there are no countries of this sort now’.⁴² The question of what vitiates the blessing of political authority is a complex one, and I am doubtful any state might be held to the exacting standard McMahan seeks. This said, for the reasons given at the beginning of this essay, I think we need to challenge a too easy distinction between authorities and citizens that risks demoralizing civic virtue and truncating public scrutiny by outsourcing the giving and exchanging of reasons to bureaucracies unresponsive to public grievance and failing to help secure the conditions of practical political reasoning. This was the concern identified by Hannah Arendt in her reflections on violence: ‘in a fully developed bureaucracy, there is nobody left with whom one could argue ... on whom pressure of power could be exerted’.⁴³ Appeals to secrecy function like secular analogues to inexpressible divine commands, grounding politics in a sovereign will that decides upon norms. Here we might enter difficult philosophical matters about will, reason, and exception-making that has sparked a revival of interest in Carl Schmitt and democratic alternatives to his thought.⁴⁴ I will only say, by my lights, and aware of its potential application in light of situations like Syria, global politics demands decisions that are creative acts that cannot always be subordinated to existing law, done so in defense of a higher law. But the threats of bureaucratic rationality, and the excessive deference of citizens, journalists, and churches, place the freedom of political action

40 For related issues in moral philosophy, see Peter Singer, ‘Moral Experts’, *Analysis* 32.4 (March 1972), pp. 115-17.

41 Jeffrey McMahan, *Killing in War* (Oxford: Oxford University Press, 2009), pp. 67-68. McMahan also resists the strict separation of *ius ad bellum* and *ius in bello* considerations.

42 McMahan, *Killing in War*, p. 70.

43 Hannah Arendt, *On Violence* (New York: Harvest Book, 1969), p. 81.

44 In addition to Kahn, *Political Theology*, see also Bonnie Honig, *Emergency Politics: Paradox, Law, Democracy* (Princeton, NJ: Princeton University Press, 2009).

itself into question if deliberation of what constitutes relevant facts and norms are not themselves subject to morally demanding public scrutiny.

Just war thinking conceived as a social practice facilitates 'structured participation in a public conversation about the use of military force'.⁴⁵ In such conversations, defenders of the just war should not only be trustees of principles or historical memory. At the very least, we should demand greater articulation of how moral norms actually relate to decisions, rather than simply the legal rules that govern political action. But it is also the vocation of ethicists to make empirical judgments—governed by empirical data—about real cases, not simply hypothetical ones. We need more thinking with the just war tradition rather than thinking about the just war tradition.

As Richard Miller has recently argued, just war thinking is not only a rule-governed morality of statecraft. Its doctrines are to be connected to democratic social criticism.⁴⁶ On his more expansive account, as an exercise in civic virtue, just war thinking must attend 'to the cultural forces that inform, and often corrode, expressions of courage and a commitment to fairness in times of national duress'.⁴⁷ Here we are asking more from the just war tradition than application of criteria, let alone applied ideal theory. It reflects Miller's call for a cultural turn in religious ethics.⁴⁸ Such a salutary turn asks the tradition to engage insights from anthropology, psychology and sociology as much as its traditional conversation with philosophy, international relations and history. The dilemmas of the surveillance state strike me as particularly in need of further interaction with emerging work in communications studies, particularly in terms of the diminished notions of persons as collections of data. Such a turn need not compete with the ongoing need to join an ethics of war with dogmatic theology, even if we recognize a difference between debates about Christology and debates about Syria. It might also allow just war reasoning to inform not only casuistry, but broader strategic thinking about the possibilities of international relations. Charles Mathewes, for example, has argued that a war on terror is a 'semiotic war—a war by signs, over signs, and in a sense about signs'.⁴⁹ It is a war, Mathewes affirms, even if it is one that 'can only be managed until it goes away, as the United Kingdom's experience with the IRA demonstrates'.⁵⁰ At the end of the day, for Mathewes, it is 'more properly a war over hope—a war to see who will most shape the hopes and fears of the populations caught up in it'.⁵¹

45 Kelsay, 'Just War Thinking as a Social Practice', p. 68.

46 Richard Miller, 'Just War, Civic Virtue and Democratic Social Criticism: Augustinian Reflections', *Journal of Religion* 89.1 (January 2009), pp. 1-30. Miller also invokes Anscombe in advancing his call to make more explicit the 'connections of just-war doctrine to the virtues of democratic social criticism' (p. 3) and 'indicate how and on what terms the ethics of war might inform and guide the powerful longings of patriotism and the existential features of membership in an ongoing political community' (p. 4).

47 Miller, 'Just War', p. 5.

48 Richard Miller, 'On Making a Cultural Turn in Religious Ethics', *Journal of Religious Ethics* 33.3 (September 2005), pp. 409-443.

49 Charles Mathewes, *The Republic of Grace: Augustinian Thoughts for Dark Times* (Grand Rapids, MI: Eerdmans, 2010), p. 53.

50 Mathewes, *Republic of Grace*, p. 55.

51 Mathewes, *Republic of Grace*, p. 53.

The just war tradition admits different purposes, both wide and narrow. We risk burdening the tradition with too much expectation, and imagining ourselves as virtuosos able to do something systematically new. The long *durée* of the tradition includes moments of revolutionary critique and status quo legitimation, but also the slow, cautious, moderate yet essential work of bending politics toward justice. Despite its rhetorical success, we do not live in heroic times for the tradition as a basis for practical reasoning or social criticism by churches. To be sure, just war thinking has been the soil for many intellectual developments in moral philosophy, political theory, and theology. As a scholar, I affirm these developments and here call for an even wider academic focus. At the same time, the urgency of our political moment requires something more from Christian ethicists if we are to practice the virtues necessary to maintain the tradition and righteous anger in the face of despair. For a new generation, cynical about both religion and politics, can our discussion yield constructive visions, rather than mere critique, genealogy, or Weberian lament? Might the tradition still offer us something to live *for* rather than simply stand *against*? Can we have more books like *Theology for International Law*?⁵² Too much of recent Christian ethics indulges in prophetic critique that does not persuade even fellow Christians. Critique we need, but joining with other disciplines, we need to find practical ways to modify our political situation, even if we cannot radically change the structures of human desire and cruelty. For that, and to end with a final Augustinian idiom, the just war tradition remains something we can use, if not enjoy. It can be used, even by sinners like us, to challenge despair, longing for the good and not just fearing the bad, with the knowledge that nothing is permanent in this world, not even the security state.

52 Esther D. Reed, *Theology for International Law* (London: T & T Clark, 2013).