

2001

The Third Annual Grotius Lecture: Just War and Humanitarian Intervention

Jean Bethke Elshtain

Follow this and additional works at: <http://digitalcommons.wcl.american.edu/auilr>



Part of the [International Law Commons](#)

Recommended Citation

Elshtain, Jean Bethke. "The Third Annual Grotius Lecture: Just War and Humanitarian Intervention." American University International Law Review 17, no. 1 (2001): 1-25.

This Article is brought to you for free and open access by the Washington College of Law Journals & Law Reviews at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in American University International Law Review by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact fbrown@wcl.american.edu.

THE THIRD ANNUAL GROTIUS LECTURE*

JUST WAR AND HUMANITARIAN INTERVENTION

JEAN BETHKE ELSHTAIN**

I. THE JUST WAR TRADITION	3
II. THE JUST WAR TRADITION AS FRAME FOR ACTION: SIC ET NON	7
III. KEEPING JUST WAR AUGUSTINIAN: WHY RESTRAINT BEGINS AT HOME	22

The just war tradition¹ is a theory of *comparative justice* applied to considerations of war and intervention. In order to better grapple with its complexities and the characteristic form of moral reasoning that enters into the just war tradition, it is important to get a grip on what this centuries-old, ongoing revised tradition consists of and the ways in which it contests the terrain of war/peace questions with the

* *Editor's Note:* The following is a revised version of a lecture presented at the American Society of International Law's ("ASIL") 95th Annual Meeting on April 4-7, 2001. The Grotius Lecture Series is co-sponsored by the American University Washington College of Law, the ASIL, and the International Legal Studies Program. The purpose of the Grotius Lecture Series is to open the ASIL forum to distinguished scholars for discussion about new and important voices that might not be heard in international law and to create expanded space and opportunities to explore the intellectual underpinnings of international law and the issues of our time.

** Laura Spelman Rockefeller Professor of Social and Political Ethics, University of Chicago.

1. See Alex Moseley, *Just War Theory*, THE INTERNET ENCYCLOPEDIA OF PHILOSOPHY, at <http://www.utm.edu/research/iep/j/justwar.htm> (last visited Sept. 4, 2001) (defining just war tradition as the historical body of agreements or regulations mutually created by similar enemies for warfare throughout history). The Geneva or Hague conventions are examples of such regulations concerning warfare. *Id.*

alternative traditions of *realpolitik*,² on one end of a continuum, and *pacifism*³ on the other. Approaching humanitarian intervention through a just war lens means that such interventions, or their possibility, must be subjected to intense scrutiny and cannot be played out simply by appealing to compassion or to doing the 'right thing.' The just war tradition acknowledges the tragedy of situations in which there may be a 'right thing' to do on some absolute standard of justice, but no prudent or decent way to do it.⁴

The structure of this essay begins with the basics of the just-war tradition. I go on to consider whether this complex tradition affords a compelling frame within which to conjure with the issue of humanitarian intervention by drawing on specific instances of such intervention and measuring these against just war stipulations. Finally, I round things off with a few comments on the politics of humanitarian intervention drawn from the Augustinian tradition. Augustinian realism warns us that no perfect standard of justice or fairness can ever be attained by which to adjudicate questions of war, violence, and intervention. But that does not mean that one should exile the language of justice and the concerns intrinsic to it from matters of war and peace altogether.⁵

2. See Brian D. Orend, *War*, STANFORD ENCYCLOPEDIA OF PHILOSOPHY, Feb. 2, 2000, at <http://plato.stanford.edu/entries/war/> (last visited Sept. 4, 2001) (describing realism as the theory that states should exercise whatever power is necessary to maximize their self-interests, regardless of moral concepts).

3. See *id.* (referring to pacifism as the rejection of war because of the killing that it causes, and the belief that war cannot be justified on any moral grounds). See generally Kenneth W. Kemp, *Morality & War*, reprinted in INTERNATIONAL MILITARY & DEFENSE ENCYCLOPEDIA (Trevor N. Dupuy, ed., 1992) (discussing the alternatives to the just war theory such as pacifism and permissivism or realism).

4. See *Just War Theory and the Faith of Unitarian Universalism*, at <http://www.jlc.net/~jmeacham/war.html> (last visited Sept. 8, 2001) (stating that just war theory recognizes that war is always the last resort because it is an evil means to an end, but in certain circumstances it may be a necessary evil).

5. See Mark Edward DeForrest, *Just War Theory and the Recent U.S. Air Strikes Against Iraq*, at <http://law.gonzaga.edu/borders/documents/deforre.htm> (last visited Sept. 8, 2001) (citing St. Augustine of Hippo, *Against Faustus the Manichaeon* XXII. 73–79 in AUGUSTINE: POLITICAL WRITINGS 222 (Michael W. Tkacz & Donald Kries, trans., Ernest L. Fortin & Donald Kries, eds., 1994)) [hereinafter St. Augustine of Hippo] (explaining that there are certain just inten-

I. THE JUST WAR TRADITION

The just war tradition is a way of thinking that refuses to separate politics from ethics. Unlike the competing doctrine of state-centered strategic realism, just war argument insists one must not open up an unbridgeable gulf between “domestic” and “international” politics. The tradition of political realism and that of just war embrace contrasting presumptions about the human condition.⁶ The realpolitikers, whose great forefathers are Machiavelli and Hobbes, hold that men in general are ungrateful, dissembling, back-stabbing, and untrustworthy—Machiavelli here—or, in Hobbes’ account, that humans are isolates driven into forward motion, bound to collide violently and that humanity in general is defined by the most horrible equality imaginable—the power each has to kill each other. It takes a lot of coercive force to hold such creatures in check, not in the interest of a positive vision of human possibility but simply to stop them marauding.

By contrast, just war thinkers begin with a commitment to a view of human beings as creatures who are always conflicted and torn and whose human relationships are characterized by love and kindness as well as selfishness and cruelty, human solidarity and human plurality. These are constant features of the human condition that are played out in a variety of plural ways in diverse cultures. Human motives and actions are always mixed: we both affirm and destroy solidaristic possibilities, often doing so simultaneously. For example, we affirm solidarity within the particular communities of which we are a part—for every human being is a member of a way of life that embodies itself institutionally as family, tribe, civil society, state. This plurality is a constant feature of human political and moral life. We may launch ourselves into wider or more universalistic possibilities from this particular site, seeking to affirm our common humanity

tions for which a war may be fought in addition to certain authority and procedural requirements that must be met before a war is defensible).

6. Unlike modern epistemologists, both traditions—just war and realism—hold that one cannot simply bracket ontological considerations in treating any perspective of social and political life. Whether this is made as an explicit philosophic argument or not is another matter. Some view of what we used to call “human nature” is implied if not unpacked outright.

through organizations, institutions, ways of being and thinking that draw us into wider streams of existence. Or we may not. And we may not in dreadful and destructive ways, for example, by denying the very humanity of those from different plural sites than our own. This denial of humanity is also a denial, or a refusal to recognize, that all cultures, without fail, define and refine moral codes and that these moral codes invariably set norms for the taking of human life; all have some notion of what counts as a violation of this norm. Standards of moral conduct pertain in all arenas in which human beings engage one another, from families to polities. The challenging question is what standards and to what ends, not whether moral norms are applicable to the arena of politics (as but one example) or not.

The tradition of *realpolitik*,⁷ by contrast, insists that the rules which govern domestic moral conduct—here the focus is a body politic internally—are inapplicable to the world of what used to be called “men and states.” Just war as politics insists that while it would be utopian to presume that relations between states can be governed by the premises and care taking apposite in our dealings with family and friends, this does not mean a war of all against all must kick in once one leaves the hearth or the immediate neighborhood or even the borders of one’s country. The strategic realist is governed by instrumental calculations and some concept of national interest; the just war thinker by a complex amalgam of normative commitments and pragmatic considerations that overlap in a number of important respects with those of strategic realism although the starting points vary. The just war thinker is not nearly so harsh in his or her evaluation of what is usually called liberal internationalism with its justifications of intervention in the name of sustaining, supporting, or building a universal culture of Kantian republics as is the *realpolitiker*. At the same time, he or she would voice considerable skepticism about any such project, not because she opposes making more robust an international regime of human rights and greater fairness and equity but, rather, because of her recognition of the intrinsic value of human cultural plurality. From the Augustinian side, noth-

7. See Orend, *supra* note 2 (explaining the concepts regarding the *realpolitik* theory).

ing less than the sin of hubris⁸ is implicated in any attempt to weld humanity into a single monoculture: here the story of the Tower of Babel is instructive.⁹ The reason God intervened, scattered humanity, and set us to babbling was to remind humanity of the need for humility and limits. The Babel story is a cautionary tale concerning any and all attempts to forge a uniform humanity under a single scheme of things.

Just war thinkers worry that certain appeals to a more cosmopolitan or internationalist order—whether of a Kantian or utilitarian sort—and to the alleged possibility of severing intervention with force from any consideration of strategic considerations or national interest, invites radical de-politicizing of national action. Note, for example, that in the multiple cases of resort to bombing in the second Clinton administration,¹⁰ the word *war* dropped away as the phrase *humanitarian intervention*¹¹ triumphed. But no one can intervene militarily without getting blood on his hands. It follows that humanitarian intervention that involves soldiers, automatic weapons, attack helicopters, bombers, cruise missiles; the vast modern arsenal of war is a war of one sort or another. I will have more to say on this as we proceed.

As a theory of war fighting and resort to war, just war thinking is best known as a cluster of injunctions: what it is permissible to do; what it is not permissible to do. For example, a war must be the last resort; a war must be openly and legally declared; a war must be a

8. See Christopher Ingham, *A Brief Introduction to Greek Tragedy*, LESSON TUTOR (Feb. 3, 2001) at <http://www.lessonstutor.com/ciGreek.html> (defining the sin of hubris as having excessive self-pride and self-confidence that eventually leads to tragic downfall).

9. See *Genesis* 11:1–9 (telling biblical story of Tower of Babel); see also *Tower of Babel*, in THE CATHOLIC ENCYCLOPEDIA, available at <http://www.newadvent.org/cathen/15005b.htm> (last visited Sept. 8, 2001) (providing a history and story of the Tower of Babel itself).

10. See, e.g., DeForrest, *supra* note 5, at 9 (discussing the United States air strikes against Iraqi military positions in September 1996).

11. See *id.* (stating that the United States justified the air strikes against Iraq as a defense of the Kurdish people); see also Mona Fixdal & Dan Smith, *Humanitarian Intervention and Just War*, in MERSHON INTERNATIONAL STUDIES REVIEW, available at <http://www.mtholyoke.edu/acad/intrel/fixdal.html> (last visited Sept. 8, 2001) (analyzing humanitarian intervention from a just war perspective).

response to a specific instance of unjust aggression—these are the *ad bellum*¹² specifications: the means deployed in fighting a war must be proportionate to ends; a war must be waged in such a way as to distinguish combatants from noncombatants, the *in bello*¹³ norms. Whether in evaluating a resort to arms or in determining the bases and nature of political order more generally, the just war thinker insists on the need for moral judgments, for figuring out who in fact in the situation at hand is behaving in a more or less just or unjust manner; who is more the victimizer and who the victim. Just war insists on the power of moral appeals and arguments of the sort that, for the strategic realist, is mere window dressing, icing on the cake of strategic considerations. For the just war thinker, moral appeals are the heart of the matter—not the *only* matter but the place from which one starts.

Just war thinkers do not propound immutable rules—they are not, to repeat, deontologists¹⁴—so much as clarify the circumstances that justify a state's going to war (*jus ad bellum*) and what is and is not allowable in fighting the wars—or interventions—to which a polity has committed itself (*jus in bello*).¹⁵ There are those who argue that our moral squeamishness must be laid to rest in times of war; the image of the violated woman, the starving child, the blown-to-pieces man, be put out of sight and out of mind. This is cruel, they say, but

12. See Moseley, *supra* note 1 (discussing the *ad bellum* conventions that morally justify an armed response or war, in other words, the justice of war). These *jus ad bellum* principles include: having a declaration by an appropriate authority, having a righteous cause, having just intentions, possessing a probability of achievement, and using means proportionate to the end. *Id.*

13. See Orend, *supra* note 2 (discussing the *jus in bello* or “in war” norms that dictate how a war may be justly fought). These principles fall into two main categories: 1) discrimination, which determines legitimate targets; and 2) proportionality, which concerns the use of the appropriate amount of force. *Id.* Additionally, the author believes that a third notion, responsibility, can be added to the traditional two categories. *Id.*

14. See *Just War Theory and the Faith of Unitarian Universalism*, *supra* note 4 (defining deontology as the evaluation of a position in terms of its uniformity with the first principles of morality).

15. See Kenneth W. Kemp, *Just-War Theory: A Reconceptualization*, in 2:2 PUBLIC AFFAIRS QUARTERLY 57-74 (Apr. 1988) (discussing formulation and evaluation of the just war theory); see also *supra* notes 12-13 and accompanying text (describing the *jus ad bellum* and *jus in bello* principles).

we live in a cruel and dangerous world. We must think in terms of the Big Picture, the system of sovereign states and balance of forces. For if we do not think in this way, if we are naïve about the world's ways, many more human beings will suffer over the long run as smaller nations or groups of people within nations are gobbled up by huge empires and tyrants run amok, are ethnically cleansed, are rounded up and murdered. Just war thinkers acknowledge the importance of this insistence on the ways in which refusing to counter aggression may make things worse, but they go on to insist that we can hold within a single frame a concern with peoples in a collective sense and a commitment to the dignity of each and every human person: the ethical concerns are never simply irrelevant.

II. THE JUST WAR TRADITION AS FRAME FOR ACTION: SIC ET NON

The matter in dispute is whether or not the just war tradition gives us a vantage point from which to assay critically forms of intervention that appeal to humanitarian considerations, or, specifically, to the just war tradition itself, often in and through the many conventions and agreements that have solidified and codified that tradition over time. For the just war thinker, military intervention cannot simply be a knockdown conclusion that follows from the articulation of triggering stipulations and claims.

How, then, would the just war thinker build a case for intervention? I have already noted that this tradition is demanding and inherently complex, aiming simultaneously to limit resort to arms and to respond to the urgent requirements of justice. There are times when claims of justice may override the reluctance to take up arms. For there are grievances and horrors to which we are called to respond—provided we can do so in a manner that avoids, to the extent that it is humanly possible, either deepening the injustice already present or creating new instances of injustice.

The first part of the just war framework is devoted to determining whether or not a resort to war—or intervention—is justified. War, for example, should be fought only for a justifiable cause of substantial importance. The primary just cause in an era of nations and states is a nation's response to direct aggression. Protecting citizens from harm

is a fundamental norm and it scarcely counts as protection if no response is made when one's countrymen and women are being slaughtered, hounded, routed from their homes and the like.

But there are other justified occasions for war. Aggression need not be directed against one's own to trigger *jus ad bellum* argument. The offense of aggression may be committed against a nation or a people incapable of defending themselves against a determined adversary. If one can intervene to assist the injured party, one is justified in doing so—provided other considerations are met. From St. Augustine on, saving “the innocent from certain harm” has been recognized as a justifiable cause:¹⁶ the innocent being those who are in no position to defend themselves. The reference is not to any presumption of moral innocence on the part of victims: nobody is innocent in the classic just war framework in that sense.¹⁷ In our time, this saving of the innocent is usually referred to as humanitarian intervention.¹⁸

This does not mean, of course, that any one nation or even a group of nations can or should respond to every instance of violation of the innocent, including the most horrific of all violations—ethnic cleansing. The just war tradition adds a cautionary note about overreach. Be certain before you intervene, even in a just cause, that you have a reasonable chance of success. Don't barge in and make a bad situation worse. Considerations such as these take us to the heart of the so-called “in bello” rules. These are restraints on the means to be deployed even in a just cause. Means must be proportionate to ends. The damage must not be greater than the offenses one aims to halt.

16. See St. Augustine of Hippo, *supra* note 5, at 220 (acknowledging that civilians, prisoners, conquered peoples, and those who pose no threat to peace, should be shown mercy).

17. This is another way in which the just war tradition guards against moral triumphalism: by insisting that even though the balance of justice may fall more or one side than the other in cases of conflict, there should be no presumption that the aggressor is wholly evil; the aggressed against wholly innocent. Presuppositions of total innocence can and have fueled horrible things.

18. See Fixdal & Smith, *supra* note 11 (examining the idealism inherent in humanitarian intervention that causes the “CNN effect” or method by which ethical concern is produced by tragedy and then molded into a political action).

Above all, non-combatant immunity must be protected.¹⁹ Non-combatants historically have been women, children, the aged and infirm, all unarmed persons going about their daily lives, as well as prisoners of war who have been disarmed by definition.

Knowingly placing non-combatants in jeopardy, knowingly putting in place strategies that bring greatest suffering and harm to non-combatants rather than to combatants, is unacceptable on just war grounds. Better by far to risk the lives of one's own combatants than the lives of enemy non-combatants. Just war thinking also insists that war aims be made clear, that criteria for what is to count as success in achieving those aims be publicly articulated, and that negotiated settlement never be ruled out of court by fiat. The ultimate goal of just war is a peace that achieves a greater measure of justice than that which characterized the ante-bellum period.

The *jus in bello* considerations are borne along by two major principles of discrimination, or targeting only legitimate war targets—here non-combatant immunity—together with proportionality, a way of restraining the scope and intensity of warfare in order to minimize its destructiveness.

How well does the just war tradition bear up when it is specifically evoked as the grounding and framework for intervention? We have two examples of recent vintage that afford interesting and ambiguous case studies: the 1991 Persian Gulf War²⁰—not, to be sure, a humanitarian intervention per se although humanitarian grounds melded to traditional grounds of non-aggression against a sovereign

19. See Kemp, *supra* note 3, at § 2.2.2 (explaining that certain groups of individuals, including ex-combatants, medics, chaplains, and certain non-combatants, fall under this immunity); see also Nicholas G. Fotion, *The Gulf War: Cleanly Fought*, in 47 BULLETIN OF THE ATOMIC SCIENTISTS, Sept. 1991, at <http://www.bullatomsci.org/issues/1991/s91/s91fotion.html> (stating that attacks should be aimed at military forces, not at the civilian population as was done by both the Allied and German forces in World War II air raids on urban populations).

20. See Fotion, *supra* note 19 (examining the morality of the Gulf War through the just war framework); see also Stephen A. Bourque, *Correcting Myths About the Persian Gulf War: The Last Stand of Tawakalna*, in 51 MIDDLE E.J. 1, para. 1 (1997), available at <http://www.mideasti.org/articles/bourque.html> (detailing certain battles and myths of the Gulf War).

state were evoked; and the 1999 intervention in Kosovo.²¹ The Persian Gulf War was prompted by the annexation of Kuwait, the brutalization of Kuwaitis, and the gutting of their country. These were clear violations of basic principles of international order that encode respect for the autonomy of states. You do not have to like the regime in place in a country that is the victim of aggression to acknowledge that an *ad bellum* trip wire has been crossed, a crime (in Michael Walzer's term)²² committed by one state against another, one that violates the United Nations charter.²³

The American response to Iraqi aggression evoked just war imperatives from the beginning. Such considerations framed much of the debate about whether or not to intervene and what means to deploy once one had. The language of 'just cause' was repeated endlessly as was 'last resort': the argument here being that sanctions were tried and failed. Legitimate authority was articulated explicitly: a twenty-seven-nation coalition acting under the imprimatur of the United Nations and in the name of collective security. So far so good? Yes and no.

Just war principles are ambiguous and complex. Evaluations have to be made at each step along the way. Greater and lesser evils (injustices) must be taken into account. Thus, certain questions must be asked, including: What would be the cost of resisting Iraqi aggression? Would the post-war Gulf region be a more, or less, unjust and disordered region? Might not the human and environmental damage, and the assaults to the spirit each and every war trails in its wake,

21. See *The Road to War*, SOCIALISM TODAY, May 1999, available at <http://www.socialismtoday.org/38/nato38.html> (outlining the events that led up to the bombings that were intended to force Milosevic to step down); see also Patrick Beaumont & Patrick Wintour, *Kosovo: The Untold Story (Part Two)*, THE OBSERVER, July 18, 1999, available at <http://www.observer.co.uk/milosevic/story/0,10639,520177,00.html> (discussing the NATO bombings during the intervention).

22. See generally MICHAEL WALZER, *JUST & UNJUST WARS* (Basic Books, Inc. 1997) (analyzing the principles of international order that when violated constitutes a violation of one state's autonomy by another).

23. See U.N. CHARTER art. 2, para. 4 (stating that nations must abstain from the threat or use of force against another independent state in terms of political autonomy, territorial integrity, or any other reason contrary to the goals of the United Nations).

blight any peace? The ends may be justified—restitutive response to aggression—but the means may be unjust or unjustifiable, even if pains are taken to avoid direct targeting of civilians.

Much of this complexity fell out of the argument as a thinned-out variant on “just war discourse” emanated from the supporters of intervention in the House of Representatives and the Senate, as well as from the Bush Administration.²⁴ It was simultaneously heartening and troubling to hear just war discourse being evoked—heartening because concerns of justice were foregrounded and because *limits* to the use of force as well as its justification came into debate. Troubling because the rhetoric of justification veered dangerously toward a crusading moral triumphalism with Saddam Hussein called a Hitler for our time, although the Iraqi people themselves were spared any blanket Nazification rhetorically speaking.

This rhetorical upping of the ante points to a temptation related to the just war tradition, namely, the way in which it can slide over into the rhetoric of crusades. Must Saddam really be a Hitler in order to justify going to war against his regime? On the other hand, on the *in bello* front, care was taken in coalition targeting policy in line with just war restraints. If postwar estimates of the noncombatant casualties of coalition bombing are at all accurate—five thousand to fifteen thousand civilians according to Greenpeace, scarcely known for its support of forceful intervention—that is ghastly but something to be grateful for at the same time. All one need do is to compare this discriminatory policy against the indiscriminate terror bombing of civilian targets in World War II to appreciate the restraint the coalition partners placed on themselves in their targeting strategy.

That having been said, one should nonetheless be haunted by the possibility that something as grave as reflecting on so-called “collateral damage,” that is, the harm that comes to non-military targets (e.g., civilian noncombatants) from the legitimate targeting of a

24. See Daniel Schorr, *Ten Days That Shook the White House*, COLUM. JOURNALISM REV. (1991), available at <http://www.cjr.org/year/91/4/tendays.asp> (evidencing that the change in the Bush Administration policy to support the Kurds was caused in part by public support for intervention since it was a just cause). The public support was generated mainly by media coverage of the displaced peoples. *Id.*

military site, rather easily becomes formulaic.²⁵ This possibility came to light most vividly in the Kosovo intervention. *The New York Times* offered a long reprise on the bombing of the Chinese embassy.²⁶ Readers of that piece learned that not only error, but also incompetence, were involved as what the *Times* called “inexpert” targetters forged forth absent higher-level accountability. What most interested me, however, was the visual that accompanied this piece. One sees an aerial photograph identified as target #493, “Belgrade Warehouse”, described as a site for “Supply and Procurement” for the Serbian forces. “Collateral damage” is noted and ranked as: “Tier 3 High” with a “Casualty Estimate” of three to seven civilian workers and an additional Calculation of “unintended civilian casualties of twenty-five to fifty.”²⁷ We’ve done our moral duty, this seems to say. Calculating civilian casualties in such a routinized way violates the spirit if not the letter of just war teaching.

Just war thinking also requires sustained attention even after the shooting has stopped. Because the media focused nearly all its concerns on whether or not noncombatants were actual targets of coalition bombing strategy during the course of the conflict in the Gulf, the public’s attention was deflected from the long-range effects of bombing, including life-threatening assaults to the infrastructure of Iraqi society—energy and water supplies, for example. These are matters that require explicit attention within a just war framework. The strategic realist can say, “Hit anything that makes them hurt and impairs their ability to fight.” But the just war thinker must not move so hastily. He or she must sift out that which is vital to the opponent’s war effort—including power and communication stations—from that which, while it may be drawn into support of military actions, is essential to sustain civilian life: here water and food supplies are foremost, even paradigmatic, as an example of what noncombatants require.

25. See Moseley, *supra* note 1 (espousing the doctrine of double effect as a justification for civilian casualties or “collateral damage” that are foreseeable yet an accidental effect of destroying a legitimate military target).

26. See Steven Lee Myers, *Chinese Embassy Bombing: A Wide Net of Blame*, N.Y. TIMES, Apr. 17, 2000, at 1 (recounting the accidental bombing of the Chinese Embassy and the process by which targets for the intervention were picked by NATO and the United States).

27. *Id.*

require.

The First Geneva Protocol (1977)²⁸ codifies just war thinking on civilian and nonmilitary targeting in language that directs our attention not only to the buildup to war, or the war itself, but to its long-term consequences. Those consequences now include malnutrition and epidemics linked directly to inadequate food and water supplies and medicines.

What this adds up to is the following: if just war is evoked, those evoking it should stay within the framework they have endorsed. This framework was abandoned once the Iraqis had been routed from Kuwait. But the war, or the aftermath of the war, continued. The health catastrophes faced by the Iraqi public; the plight of the Kurds, and the disproportionate casualty figures, with estimates of 100,000 Iraqi soldiers killed and 300,000 wounded—raises serious ethical concerns.²⁹ Was this a fair fight or a turkey shoot? Just war thinking does not permit one to evade such questions. The lopsidedness of casualties is an occasion for serious debate and a problem for the just war thinker as it is not for the strategic realist.

Also worrisome is the fact that just war considerations fell off the rhetorical radar screen once hostilities ceased. Spokesman for the United States government reverted almost immediately to the language of strategic realism and the inviolability of sovereignty, thereby justifying coalition refusal to “intervene” in the internal affairs of Iraq when the plight of the Kurdish people captured our attention.³⁰ Can you really stand back and say, “No intervention in internal affairs, that’s international law,” when you have been

28. See Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), of 8 June 1977; see also Judith Gardam, *A Feminist Analysis of Certain Aspects of International Humanitarian Law*, 12 AUSTRALIAN Y.B. INT’L L. 265, 270–74 available at <http://www.law-lib.utoronto.ca/Diana/fulltext/gard2.htm> (last visited Sept. 8, 2001) (examining Protocol I through the just war theory as one of the last efforts to codify the humanitarian law of armed conflict).

29. See R. Jeffrey Smith, *US Has, but Won’t Release Tally of Buried Iraqi Soldiers*, WASHINGTON POST, Mar. 26, 1991, at A11 (stating allied military officials in Saudi Arabia estimated 100,000 Iraqi soldier casualties).

30. See Schorr, *supra* note 24 (stating that the Bush Administration would not intervene in Iraq).

responsible in part in bringing about those internal affairs in the first place? This creates the sort of ethical schism the just war tradition aims to bridge. There is nothing wrong per se with diplomatic and strategic categories—depending on how they are used and to what ends. The problem I am gesturing toward is the taking up of the rhetoric of strategic realism abruptly once the rhetoric of just war seems to have exhausted its utility.

NATO intervention in Kosovo is, for many, a paradigmatic instance of humanitarian intervention in the very name of humanity itself, calling to mind the Nuremberg precedents and “crimes against humanity.” Hitler and Nazism were evoked repeatedly to characterize Serbian policy.³¹ It is the *in bello* dimensions of just war I aim to emphasize, although certain *ad bellum* issues would come into play in any exhaustive examination of the Kosovo intervention within a just war framework, including the vexing matter of “right authority.” If, as an editorial in *Commonweal* magazine pointed out, a hawk (or strategic realist) might have refrained in this situation—James Baker’s famous “we’ve got no dog in this fight”³²—and a pacifist similarly and by definition, unless he or she could somehow squeeze what was going on within the category of a “police action” which pacifism can endorse, interventionists of various sorts argued forcefully that ethnic cleansing is one of those rare knock-down triggers *ad bellum*. Interventionists come in several varieties, of course, and *Commonweal* notes one sort—called “genuine interventionists”—who hold to a seamless web approach to human-rights violations, namely, they are all “created equal” and justice demands going *everywhere* to stop certain harms from continuing if you go *anywhere* (provided, of course, you have the means). “Therefore, international action ought to be taken almost everywhere to stop slaughter and

31. See Robert R. Reilly, *Reductio Ad Hitlerum*, NAT'L CATHOLIC REGISTER, June 13, 1999, at <http://www.againstbombing.org/Riley.htm> (discussing Lady Thatcher’s parallel between Serbia and Nazism). See generally Barry Lituchy, *The Pope, the Nazis, and the CIA: Some Notes on the Vatican’s Role in the Destruction of Yugoslavia*, THE COLLEGE VOICE, Oct. 1995, available at <http://www.srpska-mreza.com/library/facts/Lituchy.html> (examining the role of the Catholic Church and the influence of Nazism in Serbian policy).

32. See *The Road to War*, *supra* note 21 (quoting U.S. President Bush’s Secretary of State, James Baker, stating: “We’ve got no dog in this fight” after a visit to Bosnia in June 1991).

ruin, whether it is born of ethnic and religious rivalries or internal political divisions. The principle of intervention should be universal and uncompromising.”³³ That is not the sort of interventionism the just war tradition underwrites so long as it remains tethered to Augustinian realism, hence attuned to the role of contingency, including a state’s or a coalition’s inability to respond evenly and robustly everywhere, whenever something terrible is happening, whatever the demands of an absolute standard of justice.

Humanitarian intervention comes under the category of saving innocents from certain harm, or, as it is now more commonly called, those in need of rescue. Augustine might evoke neighbor love here: serving one’s neighbor in the name of a form of friendship and stewardship.³⁴ How did this play out on the ground? Well, on the ground Kosovar Albanians were harassed, tormented, deported, and killed. But we—primarily the United States, although under the rubric of NATO—did nothing on the ground to stop this. Our stated intent, cast within human rights-justice language, was to stop ethnic cleansing in the name of humanity itself. The argument was that World War II had taught us that genocide is a crime that must not go unpunished. Other avenues had been exhausted. Mr. Milosevic was immune to diplomatic overtures. NATO is a legitimately constituted concert of states and, therefore, has authority to act, if need be, for humanitarian reasons and in the interest of collective self-defense: protecting the whole idea of a European comity of nations.³⁵ These are grounds for selective humanitarian intervention with considerations that go beyond the crimes themselves: so let’s assume *ad bel-*

33. See Gerald Vann, *Intervention: When and How?*, COMMONWEAL, Oct. 22, 1999, available at <http://www.commonwealmagazine.org/1999/991022/991022ed.htm> (discussing beliefs of genuine interventionists).

34. See James V. Schall, *Augustinian Political Philosophy*, THE POLITICAL SCIENCE REVIEWER, XXIII (1994), available at <http://www.georgetown.edu/faculty/schallj/WS10BJVS.html> (examining Augustinian thought that right living would produce a prosperous and more noble public order).

35. See *Common Values*, NATO, available at <http://www.nato.int/welcome/home.htm> (last visited Aug. 31, 2001) (stating that NATO’s purpose is to ensure freedom of its members and emphasizing the protection of human rights).

lum justification.

The biggest problem from a just war perspective in the Kosovo war was the means deployed to halt and to punish ethnic cleansing. In the first instance, our means speeded up the process as the opening sorties in the bombing campaign gave Milosevic the excuse he needed to declare martial law and to move rapidly in order to complete what he had already begun, entrenching his forces in Kosovo before NATO might change its mind about introducing ground troops into the conflict—something the United States, rather astonishingly, announced it would not do from the get-go.³⁶ We blundered into a strategy, not giving much consideration to the likely reaction to our bombs, namely, a deepening of the terror and expulsions. Hence, there was no preparation for the influx of desperate humanity to neighboring countries and regions, their plight made doubly desperate by lack of food, water, medicine, and shelter at their points of terrified egress. This doesn't seem a good way to run a humanitarian intervention whether in the name of justice or any other good.³⁷

The heart of the matter from a just war framework is this: We made no attempt to meet the strenuous demand of proportionality; rather, we violated the norm of discrimination in a strange up-ended kind of way, namely, by devising a new criterion: *combatant immunity*, as our combatants ranked higher as a consideration than did non-combatant immunity for Serbian—or Albanian Kosovar—civil-

36. See Military Operations in Federal Republic of Yugoslavia Limitation Act, H.R. 1569, 106th Cong. (1999) (prohibiting the use of Department of Defense funds from being used for deployment of ground forces in Yugoslavia); Beaumont & Wintour, *supra* note 21 (repeating Albright's statement that conflict would escalate no further and that there would be no ground troops).

37. There are *so* many critical questions to ask about this intervention. One worry, voiced by a number of critics, is whether this ostensibly new "universal dispensation can only apply to Serbia and a mere handful of other states that meet very exacting requirements: they must be sufficiently weak to be easily defeated, yet sufficiently advanced to present worthwhile targets for no-casualty bombardment. . . . Further they must be sufficiently illiberal to perpetrate outright massacres, yet sufficiently semi-democratic to capitulate when the mostly bloodless bombing of electrical supplies and other targets evokes the protests of inconvenienced citizens. . ." See Edward N. Luttwack, *No-Score War*, TIMES LITERARY SUPP., July 14, 2000, at 11, (discussing the new universal dispensation and its application). Luttwack adds: "What does it mean for the morality of a supposedly moral rule, when it is applied arbitrarily against some, but not others?" *Id.*

ians, for that matter.³⁸ With our determination to keep NATO soldiers—read American combatants—for that was the overriding domestic political consideration that had nothing to do with just war or humanitarian issues—out of harm's way, we embraced combatant immunity for our combatants and indirectly for the Serbs soldiers, too. Instead, we did a lot of damage from the air, reducing buildings to rubble, tearing up bridges, killing people in markets and television stations. It is harder by far to face determined combatants on the ground, to interpose one's combatants between the Kosovar Albanians and their depredators. This wasn't given a second thought. We did not introduce Apache helicopters into the situation for fear of a loss of but one in combat.³⁹ If combatant immunity is to become our new organizing principle, the United States will surely face in future situations in which we refuse or are unable not only to do what is right but to do what may be necessary, having set zero-casualties as a new norm for the way we do war.

This is a strange turn of events. The Serbian army could operate with impunity without any worry about facing its opponents on the ground. In the meantime, there was plenty of "collateral damage" to civilians going on. Once we had exhausted the obvious military targets, we degraded the infrastructure on which civilian life depends—this despite a disclaimer from President Clinton that we had no quarrel with the Serbian people for they, too, like the Iraqis under Saddam, were victims.⁴⁰ Because you cannot eliminate atrocities on the

38. See *Compilation of International Norms and Standards Relating to Disability*, § 5.4, available at <http://www.un.org/esa/socdev/enab/discom95.htm> (discussing the establishment of the rule of noncombatant immunity).

39. Interservice rivalry is also a factor, or may be, in the matter of use or non-use of Apache helicopters given rivalry between the Army and Air Force on the use of a planes to attack surface targets. Thanks to Judge Richard Posner for calling my attention to this issue. See generally Gregg Easterbrook, *Apocryphal Now*, THE NEW REPUBLIC, Nov. 11, 2000, available at http://www.thenewrepublic.com/091100/easterbrook091100_print.html (illustrating interservice rivalry with the example of the Army Apache helicopter in the Serbian campaign).

40. "First, I cannot emphasize too strongly that the United States and our European allies have no quarrel with the Serbian people." *Text of President Clinton Videotaped Address to the Serbian People*, Mar. 25, 1999, at <http://www.cnn.com/peccials/1998/10/kosovo/transcripts/clinton.html>.

ground by dropping bombs from an altitude that keeps them safely out of range of any possible ground-fire, although the Serbians had almost no ability to fight back, our ends were tainted by our means—means that will surely haunt us in the future. It is a terrible thing for anyone to kill or to be killed. But that is the occupational risk of men and women in arms. If the United States is no longer prepared to take any such risk for any cause, then by definition it cannot fight wars effectively even when a case has been made on comparative justice grounds. Then-President Clinton was looking for a “no casualty” or “no cost” war.⁴¹ But one pays a price, and not just in monetary terms, for such ventures. Isn't “riskless warfare” an incoherent idea? As Paul W. Kahn argued in a hard-hitting piece on *War and Sacrifice in Kosovo*:

If the decision to intervene is morally compelling, it cannot be conditioned on political considerations that assume an asymmetrical valuing of human life. This contradiction will be felt more and more as we move into an era that is simultaneously characterized by a global legal and moral order, on the one hand, and the continuing presence of nation-states, on the other. What are the conditions under which states will be willing to commit their forces to advance international standards, when their own interests are not threatened? Riskless warfare by the state in pursuit of global values may be a perfect expression of this structural contradiction within which we find ourselves. In part, then, our uneasiness about a policy of riskless intervention in Kosovo arises out of an incompatibility between the morality of the ends, which are universal, and the morality of the means, which seem to privilege a particular community. There was talk during the campaign of a crude moral-military calculus in which the life of one NATO combatant was thought to be equivalent to the lives of 20,000 Kosovars. Such talk meant that even those who supported the intervention could not know the depth of our commitment to overcoming humanitarian disasters. Is it conditioned upon the absence of risk to our own troops? If so, are such interventions merely *moral* disasters—like that in Somalia—waiting to happen? If the Serbs had discovered a way to inflict real costs, would there have been an abandonment of the Kosovars?⁴²

41. See Beaumont & Wintour, *supra* note 21 (stating that the U.S. was aiming for a no-cost war in which casualties and collateral damage should be avoided).

42. Paul W. Kahn, *War and Sacrifice in Kosovo*, Philosophy and Public Affairs 1, 1–6 (1999).

Something called “The Clinton Doctrine” fueled the Kosovo operation.⁴³ This doctrine was a hotchpotch: neither strategic realism, nor just war, nor liberal internationalism. It established no clear grounds for humanitarian intervention or political rescue offering instead a *mélange* of ideas and *desiderata* that were so murky it was nearly impossible to glean from it any clarity for either intervening or refraining from intervening in situations of humanitarian catastrophe. The doctrine consisted of two parts that involved promulgating the use of force in behalf of universal values and justifying military intervention in the internal affairs of states.

According to Michael Mandelbaum, in a highly critical piece in *Foreign Affairs*, this “so-called doctrine” made a hash of things in the Balkans where spirals of violence continue, where any indication of an American pull-out inspires panic, and where the end-result of the deteriorating mess is *de facto* partitioning, not unlike the outcome in Bosnia where the Dayton Accords ratified the results of ethnic cleansing.⁴⁴ In Kosovo, those who were victims are now victimizers and the more brutal members of the Kosovo separatist movement seem to be in ascendancy. But these persistent and deteriorated conditions have dropped off our media radar screen.⁴⁵

Let us rehearse a few of the problems with this doctrine and policy as it played out in Kosovo as a way of solidifying the difference between this way of justifying “humanitarian intervention” by contrast to a just war politics framework that cavils at risk free solutions or pseudo-solutions to horrible tragedies and political problems. Con-

43. “I want us to live in a world where we get along with each other, with all of our differences, and where we don’t have to worry about seeing scenes every night for the next 40 years of ethnic cleansing in some part of the world.” See Charles Krauthammer, *The Clinton Doctrine*, Mar. 29, 1999, at <http://www.cnn.com/allpolitics/time/1999/03/29/doctrine.html> (providing a summation of the Clinton foreign policy of the 1990s).

44. See generally Michael Mandelbaum, *A Perfect Failure*, FOREIGN AFFAIRS, Sept./Oct. 1999, at 2 (discussing NATO’s war against Yugoslavia).

45. The run-up to the Kosovo intervention arc, of course, enormously complicated, including the savvy use by the Kosovo Liberation Army of the media and international human rights groups to make the case not only for the existence of a humanitarian catastrophe, clearly the case, but for intervention of a sort that would bolster *their* cause and case even though the United States had, in 1998, characterized them as a terrorist organization. See *id.*

sider that our entire purpose in bombing was to save lives. Estimates are that some twenty-five hundred people had died before the bombing campaign and that during the “eleven weeks of bombardment, an estimated ten thousand people died violently in the province, most of them Albanian civilians murdered by Serbs. . . . By its [the bombing campaign] end, 1.4 million were displaced. . . . The alliance also went to war, by its own account, to protect the precarious political stability of the countries of the Balkans. The result, however, was precisely the opposite. . . .”⁴⁶ What Mandelbaum points to is a political failure that emerged, in part, given the means deployed to achieve our stated ends. Evoking strategic realism and national interest as well as state sovereignty as a value, Mandelbaum argues that the Clinton doctrine’s squishiness virtually guaranteed that United States policy would be driven by media attention and public opinion polls rather than coherence of any sort.

Starting from a different perspective than Mandelbaum’s, I come to quite similar conclusions. Mandelbaum is surely correct that a quick resort to bombing was the Clinton administration’s *modus operandi* to almost every foreign policy jam—whether the administration was using at any given point the rhetoric of national interest, or national security, or punishing dictators, or saving lives, or fighting the new global war against terrorism. (This being the stated rationale behind the blowing up of what turned out to be a legitimate pharmaceutical plant (The Shifa Plant) in Kartoum, Sudan.) Also preferred were embargoes that degraded the civilian infrastructure of targeted societies—a way of making war on civilians. Mandelbaum, too, opposes this way of punishing the innocent in order to express outrage at the guilty. The clearest rationale available to us to oppose such a strategy lies in the comparative justice considerations that arise from just war imperatives.

How would a just war approach would help us to parse such questions further? Consider former-President Clinton’s comments throughout the Kosovo intervention and as part of the run-up to it. Mr. Clinton deployed strained domestic analogies in an attempt to

46. See Mandelbaum, *supra* note 44, at 2–3 (quoting the death statistics resulting from the Kosovo conflict).

put a distinctively American stamp on the Balkans tragedy.⁴⁷ The events he selected can be shoe-horned within our reigning political preoccupations only *via* a tortured logic. The just war tradition, remember, attempts to balance or to hold in fruitful tension the requirements of universal moral commitments with respect for the plurality of polities, cultures, and regimes in and through which humankind realizes itself. We are invited to acknowledge that which is “in common” and to respect and recognize signs of difference so long as these do not violate certain basic norms.⁴⁸ Rather than helping us to see suffering humanity in and through the particular plight of the Albanian Kosovars with their quite particular and complex history, Mr. Clinton forced domestic analogies along these lines: he likened the signing of a federal hate-crime statute to the bombings of Belgrade, as each was designed to stop haters. The Kosovo intervention got mapped onto the preferred domestic rhetoric of the Clinton administration. The President spun out a “vision” for a new post-war Kosovo⁴⁹ cast in the language of a version of multiculturalist ideology unrealistic even for a pluralist democracy, let alone a fractured,

47. See *Remarks by the President in Media Roundtable*, May 6, 1999, at <http://www.usembassy.de/clinton99/prescon.htm> (quoting President Clinton’s remarks comparing Native American tribes and slavery in United States history to ethnic cleansing in Yugoslavia).

48. Not all cultural differences are to be respected, clearly. It would take another sort of paper to spell out those norms that every culture should observe. This would not be an impossible list as the most egregious wrongs—those that every political culture agrees are egregious, even if they violate these very norms at the same time—would include genocide or ethnic cleansing, slavery, torture. There is going to be political controversy on the boundaries. For example: does female circumcision constitute a form of torture? For those who call it “female sexual mutilation,” it clearly does as their rhetoric already reflects their commitment. Even if one has agreed that a key norm has been, or is being, violated it does *not perforce* dictate what a nation’s policy can or should be or what forms of intervention in any given situation can or would be appropriate. There is a routine form of intervention now—one might call it moral intervention—that takes the shape of international human rights protest through a growing list of international agencies and watchdog groups. See generally *U.S. Catholic Bishops’ Pastoral Letter on War and Peace*, May 3, 1983, at <http://www.nuclearfiles.org/docs/1983/830503-usrcb-war-peace.html> (explaining the moral principles and norms of the just war tradition).

49. See *Remarks by the President in Media Roundtable*, *supra* note 47 (quoting President Clinton’s remarks regarding his vision for Southeastern Europe).

destabilized region in the Balkans that will be reeling from the events here described for the next half-century or more.

But Mr. Clinton undercut this rhetoric in a May 23, 1999, op-ed in *The New York Times*. On that occasion, he not only proclaimed restoration of the status quo ante his number one priority, he added the caveat that Kosovo would come under a kind of protectorship more or less run by the KLA (the Kosovo Liberation Army) who aim explicitly for a separatist all-ethnically “pure” Albanian micro-state, not a Balkans version of American multiculturalist imperatives. Lost in both presidential rhetorics of justification (which, of course, clash with one another) was attention paid to the somber realities of intervention, including rueful recognition of unintended consequences and limits to what our power can accomplish.⁵⁰

III. KEEPING JUST WAR AUGUSTINIAN: WHY RESTRAINT BEGINS AT HOME

If just war thinking is to remain honest, it is best placed within a framework of Augustinian realism:⁵¹ this by contrast to versions of just war that, in losing a connection to this rich strand of reasoning, become mere variants on liberal institutionalism and quickly degenerate into internationalist sentimentalism. Augustinian realism offers no assurances that one can make the world safe for anything.⁵² Estrangement, conflict, tragedy—these are constant features of the human condition. Politics is one way human beings deal with this condition. Politics on any level never escapes certain pervasive features of human life in all its complexity and plural modes of cultural expression. Augustinian realism imbeds deep skepticism about the exercise of power, beginning with the aims and claims of sovereignty and of any concentration of power. At the same time, this realism

50. See William Jefferson Clinton, *A Just and Necessary War*, N.Y. TIMES, May 23, 1999, at W17 (stating President Clinton’s opinion regarding the U.S. strategy regarding Kosovo).

51. See Schall, *supra* note 34 (discussing Augustinian and Machiavellian realism).

52. See *id.* (stating that Augustinian realism recognizes the disorder in the world as a result of personal will allowed by God).

recognizes the inescapability of politics and calls upon citizens to engage the world of politics faithfully. Politics confronts us with intransigent ‘otherness,’ with people who have their own cultures and opinions. Politics requires that we respond in some concrete way to a world of conflicts and oppositions. The realist of this sort worries that we have been so overtaken by a sentimentalized notion of compassion that we have forgotten such mordant teachings as Max Weber’s definition of politics as the boring of hard boards.⁵³

There is little danger of just war turning into either a language of narrow strategic justification or rhetoric of sentiment within an Augustinian framework. Built in are barriers to the dangers inherent to the just war tradition at one end of the continuum that links it up to crusades and triumphalism. Augustinian realists are not crusaders. But they insist that we are called to act in a mode of realistic hope with a hard-headed recognition of the limits to action. You can underwrite border crossing with this perspective—because it doesn’t worship at the altar of the state—but you cannot do so with impunity given its built-in respect for the plurality of cultures in and through which humanity manifests itself.

Augustinianism as a frame for just war stipulations is more likely to emerge as a *via negativa*. There are things that must not be done and that are, by definition wrong; hence, to the extent possible, these things should be stopped. But this list of knock-down violations is not infinite: it would include genocide and ethnic cleansing, torture as an instrument of political power, unprovoked aggression against another country or people. The aim of intervening in such cases would be interpositional: not to impose an alternative order but to stop a disorder, an instance of clear injustice.

In sum: Augustinian just war thinking imposes constraints where they might not otherwise exist; generates a debate that might not otherwise occur; and promotes skepticism and uneasiness about the use and abuse of power without opting out of political reality altogether in favor of utopian fantasies and projects. It requires action and

53. See Daniel Bell, *An Excerpt From: First Love and Early Sorrows*, at http://www.pbs.org/arguing/nyintellectuals_bell_2.html (last visited Aug. 31, 2001) (“Politics is a strong and slow boring of hard boards” (quoting Max Weber, *Politics as a Vocation* (1918))).

judgment in a world of limits, estrangements, and partial justice. It fosters recognition of the provisionality of all political arrangements. It is at once respectful of distinctive and particular peoples and deeply internationalist. It recognizes self-defense against unjust aggression but refuses to legitimate imperialistic crusades and the building of empires in the name of peace. It requires paying close attention to political rhetoric, its use and abuse. It recognizes, in the words of Michael Ignatieff, that:

[t]he language of human rights provides a powerful new rhetoric of abstract justification. Keeping control of war in the modern age means keeping control of this powerful new rhetoric, making sure that the cause of human rights does not lure citizens into wars that end up abusing the very rights they were supposed to defend.⁵⁴

Another warning, this from theologian, Richard Miller:

Perhaps because humanitarian intervention can have this *prima facie* altruistic component, it is tempting to consider it to be different from war, thereby enabling those who would ban war to approve of such action. . . . Insofar as humanitarian interventions might be described (or re-described) in such terms, they appear to pose little difficulty for pacifists. The paradigm of domestic coercion or police action, allowing for the use of violence in order to stop criminal activity, may enable some pacifists to accept military action (and the prospect of violence) in international affairs.⁵⁵

In other words, humanitarian intervention must bear the heavy burden of justification that just war, in its classical sense, requires of any resort to force. What Miller calls the “intuitively admirable” notion of humanitarian intervention—intuitively admirable “insofar as they spring from selfless or other-regarding motives”—may lull to sleep our critical faculties when it comes to deployment of violent means.⁵⁶

54. MICHAEL IGNATIEFF, *VIRTUAL WAR. KOSOVO AND BEYOND* 6 (New York: Metropolitan Books, 2000).

55. See Richard B. Miller, *Humanitarian Intervention, Altruism, and the Limits of Casuistry*, 28 *J. OF RELIGIOUS ETHICS* 3, 5 (2000) (discussing humanitarian intervention).

56. See *id.* at 9 (admiring the notion of humanitarian intervention).

The American public seems at this point rather inured to the routinization of use of American bombing in foreign policy situations that it scarcely registers on the radar screen much of the time. This is especially true *if* our consciences can be kept clear through deployment of a language of justification that speaks to genuine goods. The just war tradition aims to prevent such insouciance without abandoning the language of justice in international relations altogether and leaving it, thereby, to an elastic “humanitarianism” that refuses, much of the time, to conjure with the complexities of the use of force.

Taking just war seriously raises serious questions about the use and abuse of humanitarian intervention justifications. What happened in the Kosovo intervention is a collapse of the rhetoric of justification as inapt domestic analogies got mapped onto the Balkans: bombing Serbia is the same as initiatives against so-called hate crimes. Intervention then becomes a kind of police action—not war, not violence, never a violation of norms of proportionality and discrimination. The rhetoric of noble aim—and stopping ethnic cleansing is a noble aim—may too easily become a cover for troubling and often ineffective means. Here Augustinian just war thinking would deconstruct masking rhetoric by insisting that those in authority, and citizens of the United States, face up to what is going on and ask themselves the tough questions, not to forestall justifiable intervention but to try to ensure, insofar as anything in the world of politics can be ensured, that the means do not defeat, taint, or undermine the ends.

A full fleshing out of this position is beyond the purview of this paper but perhaps I have said enough to indicate that the humanitarian intervention, or appeals to such, should not lull our critical faculties to sleep, but, rather, engage them deeply as these appeals have a kind of automatic urgency, an ethical imprimatur, of the sort that war does not. If the just war tradition cavils at the *particular* way strategic realists sever international relations from ethical restraints construed as inapplicable to the world of men, war, and states, this tradition also challenges the *particular* way appeals to humanitarianism and liberal internationalism collapse, or may collapse, domestic and foreign politics.