

Early in the book Irving tells us of the sniper's motto, undoubtedly intended to help avoid such thoughts as he was now having at this moment in the end of his combat career. "When I first heard the words 'Without warning; without remorse,' I didn't realize that remorse could ambush me without warning." The crisis of conscience that now overtook him was apparently the cause of his leaving the Army at the end of his enlistment rather than following through on his earlier intention to reenlist. "I had one question

that I pushed out of my mind until after I'd decided to leave the Army and begun finding comfort and courage in the bottom of too many bottles of booze: Was I a good man or a bad man?"

Such existentially desperate questions have been addressed in the pages of *Providence* before, including in essays by the managing editor Marc LiVecche and contributing editor Chaplain Timothy Mallard, US Army. These are good places to start for those wanting to

know something more about spiritual injuries in war. Irving's dependence on alcohol was followed by a suicide attempt, each being means borne of his attempt to answer that question about his own moral character. Like too many of our combat veterans, Irv was never wounded in the conventional sense, but he became a living example in the library of moral injury. P

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BOOK REVIEW

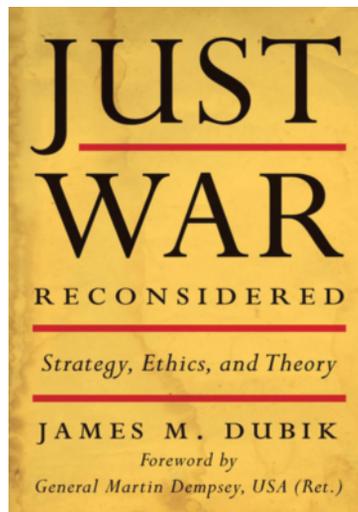
REVISING OR APPLYING THE JUST WAR TRADITION?

Review by J. Daryl Charles

JUST WAR RECONSIDERED: STRATEGY, ETHICS AND THEORY.

JAMES M. DUBIK, University Press of Kentucky, 2016, 225 pages.

Surely it was not a coincidence that my exposure to James M. Dubik's *Just War Reconsidered* coincided with my reading of a memoir by one of now retired Lt. General Dubik's esteemed U.S. Army colleagues. As Dubik informs the reader, General Stanley McChrystal, who commanded special operations forces in Iraq and later in Afghanistan, took the responsibilities for that command with utmost seriousness. During the dark period of the Iraq conflict in the mid-2000s, McChrystal agonized over the loss of life—to both Coalition forces and Iraqi civilians who were being murdered and mutilated by al-Qaeda and insurgent forces.



Amidst the stress of months-long, close-quarter combat, McChrystal called together his leaders, many of whom he had known for years. His plea was

emotional but straightforward. "Listen," he told them, "this really hurts. But let me tell you what would make these [losses of life] hurt even more: if it is all in vain."¹ Dubik, who at the time was serving as the commanding general of the Multi-National Security and Transition Command in Iraq, as well as a special advisor to several commanding generals,² has this to say: "What McChrystal's comments reveal...is that how these lives are used does matter."³ *How those lives are used, how their commanders use them, really matters.* This responsibility, Dubik concludes, derives from the fact that "soldiers, at least American soldiers, remain citizens and that the

democracy for which they fight retains its obligation to provide adequate care for its citizens.”⁴

These comments express the heart of Dubik’s burden in *Just War Reconsidered*. Indeed, it is no exaggeration to describe his basic thesis as a “burden.” While “America may be tired of war,” he observes in the prologue, “war does not seem to be tired of America.”⁵ And, as Dubik is acutely aware, the evidence overwhelms—from the conflicts in Iraq and Afghanistan to Libya and Syria to the Islamic State in its manifold expressions. None of which, Dubik rightly concludes, will end *by itself*. And these developments, which extend throughout Africa and Asia, are fully aside from the belligerence of Russia’s intervention in the Baltic region, North Korea’s interminable bellicosity, the menace of China, the seemingly endless bloodletting in Africa, and the growing threats associated with “cyber-warfare.” In multiple forms, most of which are non-conventional in nature, war remains “a condition of our contemporary strategic environment for the foreseeable future.”⁶

Dubik’s argument is straightforward: current just war theorizing is insufficient insofar as it “omits a major part of the conduct of war.”⁷ A “new addition” to *jus in bello* theory is urgently needed.⁸ The reason for this, in Dubik’s view, is patent:

The conduct of war...involves more than fighting. War is also conducted at the strategic level, the level at which senior political and military leaders set war aims, identify strategies and policies, approve the military and nonmilitary campaigns necessary to achieve those war aims,

and establish the coordinative bodies necessary to translate plans into action and adapt as the vagaries of war unfold.⁹

Dubik worries that “few—if any—accounts of *jus in bello*” address the responsibilities of senior political and military leaders at the strategic level, what he refers to as “war-waging.”¹⁰ Developing a rationale for this “missing link” constitutes the burden of chapter one.¹¹ Chapter two expands the contours of this “war-waging” task, setting it apart from—though not in opposition to—“war-fighting” dimensions of *jus in bello*. Chapters three and four attempt to analyze two “alternative accounts” of how senior military and political leaders interact at the strategic level. One of these, the “principal-agent” account, is based on obedience, compliance, and control as motivation for enforcement. The second model, what Dubik calls “unequal dialogue,” has the advantage of acknowledging particular responsibilities specific to both the political and the military sectors. At the same time, it too is deficient to the extent that it does not adequately translate “dialogue” into execution of aims.

Chapters five and six provide a fuller account of “war-waging” responsibilities within the *jus in bello* context. Dubik argues that to wage war justly, various “cross-disciplinary” dialogues must occur and then be melded to a “performance-oriented” execution. Five principles embody this important strategic process as Dubik understands it: (1) the principle of “continuous dialogue” between civilians and military senior leadership; (2) the principle of “final decision authority,” by which military subordination to civil authority

in a democracy is recognized following continual military-civilian dialogue; (3) the principle of “managerial competence,” by which senior military and political leaders ensure that their respective bureaucracies support war aims and strategies; (4) the principle of maintaining “war legitimacy,” i.e., cultivating ongoing support of the war effort throughout the population by senior military and political leaders; and (5) the principle of “resignation,” which acknowledges that, because we are moral agents, political and military leaders are conscience- rather than task-bound.

Because war, in terms of practical morality, is an extraordinarily complex human activity, and because mistakes, misjudgments, and misunderstandings abound at both the strategic and tactical levels, Dubik is concerned to emphasize the importance and necessary inclusion of “war-waging” in *jus in bello* considerations. This is as it should be. Dubik believes, moreover, that the “war-waging” principles he has set forth in the volume are not only “useful” in “the training, education, and selection of political and military leaders” who are confronted with the matter of war but are “requirements” for “war-waging leadership.”¹² But they are important for the general citizenry as well insofar as they provide “a way to judge what is done on their behalf, whether in combat or in capitals.”¹³

Just War Reconsidered is an important work. It deserves the widest readership for a variety of reasons. It is written by someone who not only has invested a career serving militarily “in the trenches” but who has also wrestled with the matter of moral leadership at multiple levels. In addition

to his experience during the “Surge” of 2007-08 serving as the commanding general of the Multi-National Security and Transition Command, his 37 years of service in the U.S. Army have included teaching ethics and just war doctrine at West Point and applied military force at the Army’s School of Advanced Military Studies at Fort Leavenworth, Kansas. Thus, as a former infantryman, paratrooper, and Ranger, and as a senior military leader, Dubik is well placed to argue for the inclusion of “war-waging” alongside “war-making” in discussions and treatments of *jus in bello*.

Additionally, Dubik’s commitment to the fundamental belief that soldiers and statesmen, civilian leaders and military leaders, are all moral agents and hence accountable for war aims and intentions and not merely war’s execution is to be applauded. Relatedly, the recurring accent throughout the book on the need for *dialogue*—between and among military leaders at various levels of authority, between military and civilian leaders, and even between senior political and military leaders and the general public—is to be welcomed. The spectacular failure or absence of such dialogue, from Vietnam to the present, surely affords us the opportunity early in the 21st century to reflect on this urgent need. Lt. Gen. James Dubik, to his great credit, is convinced that any theory of ethics that is applied to justify and guide war-waging and war-fighting must take into consideration the actual conditions in which moral agents must reflect, decide, and act. The difficulty or ambiguity of conditions “may mitigate responsibility,” but it “does not erase it.”¹⁴

At the same time, one senses not only in this timely, well-argued volume but also among military leaders in general a reticence to acknowledge the religious sources of morality. As one Major recently lamented to me at the Army’s Command and General Staff College at Fort Leavenworth following my address on justice, charity, and right intention,¹⁵ “the Army wants you to be good and do good, but it doesn’t tell you *how* or *why*.” The words of this mid-level officer have stayed with me.

What is it that we seem to fear in terms of the moral training offered to our soldiers and to military leadership as a whole?¹⁶ Quite helpfully, Dubik uses Michael Walzer’s *Just and Unjust Wars* as both a model of moral reasoning and a foil. Quite correctly, he points out the inadequacy of Walzer’s separation of *jus ad bellum* and *jus in bello*.¹⁷ As one who was responsible for both war-making and war-waging, Dubik knows from experience the danger—indeed the moral schizophrenia—of divorcing the two realms.

And yet it is telling that no single just war theorist of note who interacts with the classic Christian moral tradition appears in Dubik’s bibliography.¹⁸ To illustrate, *the most distinguished just war historian alive*, James Turner Johnson, whose books on the history and applicability of just war reasoning have rivaled Walzer’s influence, is not cited even once in the volume. Nor do any of Johnson’s important works—several of which are already classic texts—appear in the bibliography. This is truly remarkable since, with the notable exception of Walzer and perhaps the Canadian philosopher Brian Orend, most theorists operating within the

just war tradition do so with a keen awareness of its debt to the Christian moral tradition.¹⁹ From Ambrose, Augustine, Gratian, Alexander of Hales, Aquinas, Luther, Calvin, Vitoria, Suárez, Grotius, and Locke, to John Courtney Murray, Paul Ramsey, William V. O’Brien, James Turner Johnson, and Jean Bethke Elshtain, the most significant just war theorists, past and present, “secular” or religious,²⁰ have done their work—and their “policy analysis”—with a conspicuous debt to the Christian moral tradition. And they have been important architects of our own cultural heritage.

British ethicist Nigel Biggar, whose important work well illustrates my point,²¹ has expressed the truth with precision: “So with due respect to just war Habermasians, the search for a universally acceptable ‘secular’ language [for just war] is a narcissistic illusion. The same applies, *pace* just war Rawlsians, to the search for an overlapping consensus that transcends controversy.”²² My own hunch is that even Lt. Gen. Dubik would agree with me at this point: moral principle is not some hermetically-sealed entity waiting to be lassoed by Rawlsian “neutralists” or well-meaning secularists. Such, in truth, does not exist. Moral principle, rather, is incubated in a religious matrix, which is why we find the just war idea developed and refined chiefly within the classic Christian moral tradition. P

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Freedom (Routledge, forthcoming), and (with David D. Corey) *The Just War Tradition: An Introduction* (ISI Books, 2012).

(Endnotes)

1 General Stanley McChrystal, *My Share of the Task: A Memoir* (New York: Penguin, 2014), 185, reproduced in James M. Dubik, *Just War Reconsidered: Strategy, Ethics, and Theory* (Lexington: University Press of Kentucky, 2016), 53.

2 Dubik, 2.

3 *Ibid.*, 53.

4 *Ibid.*

5 *Ibid.*, 1.

6 *Ibid.*

7 *Ibid.*, 3.

8 Classic renditions of just war doctrine typically identify two principal moral criteria under the *in bello* rubric: discrimination or non-combatant immunity and proportionality. Dubik adds to these the principle of double effect and double intent and the principle of due care and due risk (following Michael Walzer, *Just and Unjust Wars* [4th ed.; New York: Basic Books, 2006], 44, 137, 156). Most theorists subsume double effect and due risk under the criterion of discrimination/non-combatant immunity. See, for example, “Part II: Right Conduct in the Use of Military Force” of James Turner John and Eric D. Patterson, eds., *The Ashgate Research Companion to Military Ethics* (Surrey, UK, and Burlington: Ashgate, 2015), 115-328.

9 Dubik, 3.

10 *Ibid.*, 4.

11 One might respond that this is less a “missing link” than it is a matter of prudence—that is, a matter of *applying* the existing *in bello* criteria in an integrated and holistic manner from top to bottom. In addition, the dialogue

and mutual accountability which Dubik advances apply to *democracies*—which are a fairly recent development—and would be difficult to conceive of in traditional monarchies. See, however, Gregory M. Reichberg, “Thomas Aquinas on Military Prudence,” *Journal of Military Ethics* 9, no. 3 (2010): 261-74, and idem, “The Decision to Use Military Force in Classical Just War Thinking,” in James Turner Johnson and Eric D. Patterson, eds., *The Ashgate Research Companion to Military Ethics* (Surrey, UK, and Burlington: Ashgate, 2015): 13-23, esp. the section “Aquinas and the Moral Virtues of Military Command.”

12 Dubik, 168.

13 *Ibid.*, 170.

14 *Ibid.*, 25.

15 J. Daryl Charles, “The Ethics of Humanitarian Intervention and the Just War Tradition: Rethinking the Implications of Neighbor Love in the 21st Century,” *The Ethics of Humanitarian Military Operations and Intervention*, April 18-21, 2016, U.S. Army Command and General Staff College, Fort Leavenworth, KS. Accessible at <http://www.cgscfoundation.org/wp-content/uploads/2016/04/Charles-EthicsofHlandJWT.pdf>.

16 At the very least, this would seem a contradiction of the idea and function of military chaplaincy. On the other hand, to its credit, the U.S. Army a decade ago instituted an annual ethics symposium, which has been integrated into the curriculum of the Command and General Staff College at Fort Leavenworth. Mid-level officers—i.e., Majors and Lt. Colonels—spend ca. eleven months at the College in a rich and much needed environment of reflection and personal study.

17 Walzer, *Just and Unjust Wars*, 21, 228-32, 251-55.

18 Notwithstanding the acknowledgment by Dubik on p. 13 that “the update to traditional just war theory is an active field for moral philosophers” and that

“the discussion is far from finished,” he writes: “My purpose in this book... is not to enter any of these debates, for these are being thoroughly examined by others” (*ibid.*). I would argue that in the very spirit of the dialogue Dubik is so concerned to stimulate, military leadership should be entering these debates and dialoguing in significant ways. More than likely, civilian-military relations would benefit therefrom.

19 Walzer, it needs emphasizing, is an anomaly. The secularist and metaphysical materialist, by sheer definition, deny a transcendent source of morality. While a massive amount of literature has appeared in the last fifteen years on the just war idea, much of this has been critical of the tradition or of various aspects of the tradition. Most just war exponents are not “secularists,” since to give an account of the just war tradition requires a perspective that is willing to acknowledge its incubation and refinement as coming chiefly from within the Christian moral tradition of the last two millennia. On the great value and contribution of religious conviction in the public sphere, see Nigel Biggar, *Religious Voices in Public Places* (Oxford and New York: Oxford university Press, 2009).

20 Hereon see, for example, James Turner Johnson, “The Beginnings of a Secular Just War Doctrine,” chapter 3, and “Secularized Just War Doctrine: Grotius, Locke, and Vattel,” chapter 4, in idem, *Ideology, Reason and the Limitation of War* (Princeton: Princeton University Press, 1975), 150-207 and 208-56.

21 See especially his *In Defence of War* (Oxford and New York: Oxford University Press, 2013).

22 Nigel Biggar, “Natural Flourishing as the Normative Grounds of Just War,” in A.F. Lang, Jr., Cian O’Driscoll, and John Williams, eds., *Just War: Authority, Tradition, and Practice* (Washington, DC: Georgetown University Press, 2013), 50.