

LECTURE

No. 1349 | JULY 31, 2026

DELIVERED JULY 16, 2026

Just War Theory in a Changing World Order

Charles D. “Cully” Stimson

KEY TAKEAWAYS

Just War Theory is a restraint on power, a framework of moral judgment, and a stern reminder that the sword, even lawfully borne, is an instrument to be feared.

Just war principles are not antiquarian ornaments; they are indispensable safeguards of human dignity and constitutional government.

The law of armed conflict translates moral precepts into operational duties; it binds commanders and soldiers because moral agency does not evaporate under orders.

Thank you for inviting me to join you and share my thoughts on a question older than the modern state, older than the Westphalian settlement, older even than the constitutional architecture whose defense occupies so much of our professional life. It is the question whether war—terrible, convulsive, morally dangerous war—can ever be just. The question is not the property of theologians alone, nor of philosophers, nor of generals, nor of lawyers. It belongs to civilization itself. For as long as men have taken up arms, they have also felt the need to explain why they did so and to distinguish the soldier from the brigand, the magistrate from the murderer, the defense of justice from the intoxication of conquest.

Homer’s *Iliad*, among our earliest literary meditations on war, does not present combat as a mere

This paper, in its entirety, can be found at <http://report.heritage.org/hl1349>

The Heritage Foundation | 214 Massachusetts Avenue, NE | Washington, DC 20002 | (202) 546-4400 | heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

arithmetic of power. Achilles is not simply strong; he is wrathful. Hector is not simply brave; he is bound by duty, city, family, and honor. Even in that heroic and savage world, there were standards—sometimes observed, sometimes violated—about reasons for fighting and conduct in battle. The ancient mind, no less than the modern conscience, knew that war is never morally self-authenticating. The mere fact that a nation *can* fight does not mean that it *may* fight. And the mere fact that it may fight does not mean that it may fight in any fashion it pleases.

Just War Theory: A Framework of Moral Judgment

That intuition, disciplined by Christian theology, refined by natural law, translated into international law, and embodied in our own constitutional structure, is what we call Just War Theory. It is not a hymn to militarism. It is not a warrant for adventurism. It is not the moral equivalent of a blank check drawn on Providence and payable to the ambitions of statesmen. Properly understood, it is a restraint on power, a framework of moral judgment, and a stern reminder that the sword, even when lawfully borne, remains an instrument to be feared.

We live in an age in which the old temptations return wearing new garments. The lust for dominion appears now not only in armies and ideologies, but in algorithms, autonomous systems, drone swarms, cyber operations, and artificial intelligence tools capable of compressing the time between suspicion and destruction. In such an age, just war principles are not antiquarian ornaments. They are indispensable safeguards of human dignity and constitutional government.

Just War Theory is rooted in the Christian tradition, especially through Roman Catholic theology. The Catholic tradition begins not with a romantic view of war, but with a sober anthropology. Man is made in the image of God; man is also fallen. Political authority exists to secure the common good, but political authority itself is susceptible to vanity, fear, ideology, and the *libido dominandi*—the lust for power. Thus, the tradition refuses both pacifist abstraction and bellicose enthusiasm. It recognizes that peace is the normal object of political order, yet it concedes that force may be necessary to defend the innocent, punish grave wrongs, and restore a peace shattered by aggression.

The Old Testament presents episodes of fearsome violence, including the Battle of Jericho in Joshua 6. But those episodes cannot serve as a license for modern states to wage annihilating wars. Israel, in those accounts, is a theocracy acting under divine command. No temporal sovereign may claim

the authority of God over life and death. The lesson is not that rulers may slaughter at will. It is precisely the opposite: Temporal power is limited power, and the resort to arms requires moral justification.

Saint Augustine was the first great Christian thinker to give systematic attention to the possibility of a just war. He did so reluctantly as one who understood that even a justified war is a calamity. For Saint Augustine, war may be tolerated only to avert greater injustice and to preserve or restore a minimal order without which human flourishing becomes impossible. He wrote in *Contra Faustum* that “[t]he natural order conducive to peace among mortals demands that the power to declare and counsel war should be in the hands of those who hold the supreme authority.”¹ That sentence contains a proposition of enduring constitutional significance: War must not be privatized. It must not be left to factions, companies, private militias, or mobs. The sword belongs to lawful authority, and lawful authority bears responsibility before God, law, and the political community.

Augustine also insisted on just cause. In his commentary on Joshua, he described a just war as “one that avenges wrongs, when a nation or state has to be punished, for refusing to make amends for the wrongs inflicted by its subjects, or to restore what it has seized unjustly.”² A war of conquest, aggrandizement, or plunder cannot satisfy that test.

Finally, Augustine demanded right intention. In his letter to Boniface, he admonished: “Peace should be the object of your desire; war should be waged only as a necessity and waged only that God may by it deliver men from the necessity and preserve them in peace. For peace is not sought in order to the kindling of war, but war is waged in order that peace may be obtained.”³

Legitimate Authority, Just Cause, and Right Intention

Here is the Augustinian genius: Motive matters. A state may possess an army, a *casus belli*, and a plausible strategic objective and still act unjustly if animated by vengeance, cruelty, or domination. War must not become the sacrament of national self-worship. Necessity, not will, must slay the enemy. Mercy must discipline victory.

Saint Thomas Aquinas, in the *Secunda Secundae* of the *Summa Theologica*, Question 40, “De bello,” took Augustine’s scattered insights and gave them scholastic precision. Aquinas identified three necessary conditions: legitimate authority, just cause, and right intention.

- On legitimate authority, he taught that only the sovereign charged with care of the common good may declare war.⁴

- On just cause, he wrote that “a just cause is required, namely that those who are attacked, should be attacked because they deserve it on account of some fault.”⁵
- On right intention, he wrote that “it is necessary that the belligerents should have a rightful intention, so that they intend the advancement of good, or the avoidance of evil.”⁶

Aquinas’s discussion of self-defense also brings us to the Principle of Double Effect. An act may have both good and evil effects. It may be permissible only if the act itself is good or morally neutral; if the actor intends the good effect and merely foresees, without intending, the evil effect; if the evil effect is not the means to the good end; and if there is proportionate reason for permitting the evil effect. The tactical bomber who strikes a military target while foreseeing but not intending civilian casualties is not morally identical to the terrorist bomber who seeks civilian death as an instrument of coercion. The outward act may resemble itself; the moral object does not.

Later thinkers, including Francisco de Vitoria and Hugo Grotius, clarified additional criteria: proportionality, reasonable chance of success, and last resort. These were not alien grafts upon the tradition. They were refinements of its central premise: War is not an ordinary tool of policy, but an extraordinary and tragic instrument whose moral legitimacy depends upon strict conditions.

The Catechism of the Catholic Church gives the classical doctrine its contemporary formulation. Paragraph 2309 outlines the four strict traditional conditions required for legitimate defense by military force. It states that “[t]he strict conditions for legitimate defense by military force require rigorous consideration.” It requires (1) that “the damage inflicted by the aggressor...must be lasting, grave, and certain;” (2) that all other means of ending it have proved “impractical or ineffective”—the “last resort” doctrine; (3) that there “be serious prospects of success;” and (4) that “the use of arms must not produce evils and disorders graver than the evil to be eliminated.” It adds that “the power of modern means of destruction weighs very heavily in evaluating this condition.”⁷

That last sentence deserves our attention. The tradition is not frozen in amber. It does not ask us to pretend that a sword, a musket, a bomber, a nuclear missile, a cyber weapon, and an autonomous drone present identical moral problems. The principles endure, but their application must account for technology, scale, speed, collateral effects, and the capacity of modern weapons to produce consequences beyond the imagination of earlier centuries.

His Holiness Pope Leo XIV's recent encyclical *Magnifica Humanitas* has intensified the debate. The encyclical warns that the "just war" theory "has all too often been used to justify any kind of war" and, in light of modern weapons and artificial intelligence, "is now outdated." He further observes that "[h]umanity possesses far more effective and capable tools for promoting human life and resolving conflicts, such as dialogue, diplomacy and forgiveness."⁸

His Holiness laments a "violent culture of power" in which peace appears not as a responsibility but as a fragile interval between conflicts. And he warns that autonomous weapons systems make war "more 'feasible' and less subject to human control."⁹

One may agree or disagree with the encyclical's formulation that Just War Theory is "outdated." My own view is that the abuse of a doctrine does not refute the doctrine. That bad statesmen have dressed up aggression in the vocabulary of justice does not mean that justice is mute. It means that lawyers, judges, legislators, clergy, scholars, and citizens must be more exacting, not less. The remedy for counterfeit currency is not the abolition of money; it is the enforcement of standards by which the genuine is distinguished from the fraudulent.

But Pope Leo's warning is salutary. He reminds us that the doctrine can be corrupted into a rhetoric of permission. If the phrase "just war" becomes a benediction placed after policy has already been chosen, then the doctrine has been betrayed. The criteria must precede action, constrain action, and remain operative throughout action.

Just War and the Constitution

For Americans, legitimate authority to declare war is not an abstraction. It is written in the Constitution.¹⁰ Article I, Section 8 grants Congress the powers to declare war (Clause 11); raise and support armies (Clause 12); provide and maintain a navy (Clause 13); and make rules governing the armed forces (Clause 14). Article II establishes the President as Commander in Chief.

The Framers did not lodge all war power in one hand because they understood the propensity of executives to seek energy and of legislatures to deliberate. The constitutional design reflects a prudential division between initiation and execution, between popular consent and military command.

Here the Federalist Society's concerns meet the just war tradition. A war may be morally defensible in cause and still constitutionally suspect in authorization. Conversely, a war may be procedurally authorized and morally dubious. Sound statecraft requires both legality and justice.

The War Powers Resolution of 1973,¹¹ whatever one thinks of its constitutionality—no Administration has so believed—and practical effectiveness, reflects the continuing struggle to reconcile executive initiative with congressional responsibility. The separation of powers is not a technicality. It is a moral architecture designed to slow passion, test claims, and require the political branches to assume responsibility before the nation commits blood and treasure.

Our friend Professor John Yoo has famously emphasized the breadth of executive power in matters of national security and the need for energetic presidential action in a dangerous world. That argument must be taken seriously. The world does not wait politely while committees perfect syllogisms. Yet even the most vigorous account of executive power does not dispense with moral judgment. Energy in the executive is a constitutional virtue only when yoked to law, prudence, and the public good. Hamiltonian vigor without Augustinian restraint becomes merely efficient willfulness.

Moral Principles and Operational Duties

Just War Theory does not end once war begins. The law of armed conflict translates moral principles into operational duties. It distinguishes combatants from noncombatants, military objectives from protected objects, necessary force from wanton cruelty. It binds commanders and soldiers because moral agency does not evaporate under orders.

The *Department of Defense Law of War Manual* defines the law of war as “that part of international law that regulates the resort to armed force; the conduct of hostilities and the protection of war victims in both international and non-international armed conflict; belligerent occupation; and the relationships between belligerent, neutral and non-belligerent States.”¹²

Its humanitarian purposes include “protecting both combatants and noncombatants from unnecessary suffering,” “safeguarding persons who fall into the hands of the enemy,” and “facilitating the restoration of peace.”¹³ Its functional purposes include “ensuring good order and discipline,” “fighting in a disciplined manner consistent with national values,” and “maintaining domestic and international public support.”¹⁴

The DOD *Law of War Manual* identifies three interdependent principles—military necessity, humanity, and honor—which in turn provide the foundation for other law of war principles such as proportionality and distinction.¹⁵

- **First, military necessity:** Justifies any and all actions necessary to defeat the enemy as quickly and efficiently as possible which are lawful according to modern law and the law of armed conflict.

- **Second, humanity:** The principle that forbids the infliction of suffering, injury, or destruction unnecessary to accomplish a legitimate military purpose. It is related to military necessity as the two terms complement one another. Humanity can be viewed as the logical inverse of the principle of military necessity.
- **Third, distinction, also called discrimination:** Combatants must be distinguished from noncombatants and military objectives from protected property or places.

The concept of proportionality in the law of armed conflict is often-times misunderstood. It is a principle that specifies that even where one is justified in acting, one must not act in a way that is unreasonable or excessive. For example, the anticipated incidental loss of life and damage to property must not be excessive in relation to the concrete and direct military advantage expected.

These are not sentimental restrictions imposed by people who do not understand war. They are disciplines that make lawful war possible. They preserve the distinction between force and savagery. They help ensure that the nation does not destroy the moral order it claims to defend.

Just and Unjust Wars

Let me turn to some examples. Examples are useful because they prevent doctrine from floating above history. No historical judgment is without controversy, but certain cases illuminate the tradition.

The Allied war against Nazi Germany is perhaps the paradigmatic modern example of a just war. The cause was grave and certain: aggression, conquest, genocide, and the destruction of the European order. Legitimate authorities acted in defense of nations and peoples under existential threat. The intention, at least in its central moral object, was the defeat of a regime that had made war and extermination instruments of statecraft. There was a reasonable chance of success once the Allies marshaled their resources, and although particular acts within the war remain subject to moral scrutiny, the war's overarching purpose satisfies the classical criteria.

The Korean War, fought under United Nations auspices after North Korea's invasion of South Korea, also presents a strong case for just war. It responded to aggression, sought to restore an invaded state, and resisted the forcible destruction of political independence. It was limited in aim even if the conflict became strategically complex and morally costly.

By contrast, Nazi Germany's invasion of Poland in 1939 was plainly unjust: a war of aggression founded on lies, racial ideology, and territorial ambition. The Nazis' concept of "total war" was the rejection of just war principles: The Germans had a proverb, *Kriegsraeson geht vor Kriegsmanier*, which translated to "necessity in war overrules the manner of warfare."¹⁶

Imperial Japan's assault across Asia and the Pacific likewise involved aggressive expansion, atrocities against civilians and prisoners, and a contempt for distinction and humanity. Saddam Hussein's invasion of Kuwait in 1990 was unjust because it sought annexation and domination, not the rectification of grave wrong. Russia's invasion of Ukraine in 2022 likewise violates the core prohibition on wars of aggression: A sovereign state was attacked to subordinate its political independence and territorial integrity.

Other cases are arguably more debatable. That difficulty is not an embarrassment to the doctrine. It is the doctrine doing its work. Just war reasoning does not promise mechanical answers. It forces statesmen to ask the right questions before the trumpet sounds.

Just War Theory and Artificial Intelligence

Artificial intelligence now confronts Just War Theory with an acute challenge. AI can process vast quantities of data, identify patterns, assist targeting, improve logistics, enhance defensive systems, and reduce risks to soldiers and civilians. Used wisely, it may make military action more discriminate and more proportionate. Used foolishly, it may make war faster, easier, less accountable, and less human.

The central principle must be clear: There must be a human in the decision-making loop. No form of artificial intelligence should be permitted to decide whether to conduct war, whether to initiate hostilities, or whom to target with lethal force. Machines may assist judgment; they must not replace it. Algorithms do not possess conscience. They do not understand mercy. They cannot bear guilt. They cannot answer before Congress, a court-martial, a grieving mother, or God.

DoD Directive 3000.09 recognizes this reality by requiring autonomous and semi-autonomous weapon systems to be designed so that commanders and operators can exercise appropriate levels of human judgment over the use of force.¹⁷ The Department of Defense has stated that such systems must be employed responsibly and lawfully, consistent with the law of war, applicable treaties, weapon safety rules, and rules of engagement. That policy is not bureaucratic embroidery. It is the operational expression of a moral truth: Lethal force is a human responsibility.

The danger is not merely that AI will make mistakes, though it will. The danger is that human beings will use AI as a veil for moral abdication. A commander may be tempted to say “the system selected the target.” A policymaker may say “the model assessed the risk.” A nation may say “the machine made the engagement lawful.” Such statements are evasions. The human officer who authorizes force remains responsible. The civilian leader who orders the campaign remains responsible.

AI also intensifies proportionality concerns. If targeting cycles accelerate beyond meaningful human review, proportionality becomes a formula rather than a judgment. If a system cannot explain why it identified an object as a military objective, distinction is degraded. If autonomous weapons lower the political and psychological cost of using force, last resort becomes less restraining.

Pope Leo’s *Magnifica Humanitas* is right to warn that autonomous weapons may make war more “feasible” and less subject to human control.¹⁸ Feasibility is not morality. Speed is not prudence. Precision is not justice. Therefore, a just war framework for AI should include at least five commitments.

- First, humans must decide whether to use force.
- Second, humans must approve lethal targeting decisions.
- Third, systems must be tested under realistic conditions and be explainable enough to permit meaningful review.
- Fourth, commanders must retain the ability to intervene, abort, or terminate engagements.
- Fifth, accountability must be preserved through records, audits, rules of engagement, and legal review. To remove the human person from the decisive moral act is not technological progress. It is a retreat from civilization.

Some will say that just war reasoning is too slow for modern threats, but deliberation is not paralysis. Some will say that moral restraint is naïve when enemies are ruthless, but the answer to barbarism is not imitation. Some will say that law is irrelevant when national survival is at stake, but if survival requires the destruction of the principles that make the nation worth defending, then victory has become indistinguishable from defeat.

Just War Theory disciplines the statesman, the soldier, the lawyer, and the citizen. It asks: Who has authority? What wrong is being answered? Have peaceful means been exhausted? Is there a serious prospect of success? Are the means proportionate? Are civilians protected? Are prisoners treated humanely? Is the aim peace, or is it domination dressed as necessity?

These questions are especially urgent for our Republic. Citizens in a constitutional order are not subjects to be carried along by martial enthusiasm. They are participants in the judgment of war and peace.

Congress must deliberate—a skill and habit that has atrophied in recent decades, ceding authority to the executive branch, further eroding the equipoise required by the separation of powers. The Executive must execute faithfully and lawfully—and in this context, morally. Courts must interpret the law where jurisdiction and competence permit. The people must resist both cowardice and crusading intoxication.

In the 19th century, technology altered labor and capital. In the 20th century, industrialized war and nuclear weapons altered the meaning of destruction. In the 21st, artificial intelligence threatens to alter agency itself. That is why we must insist that law and morality remain personal. War is declared by men, conducted by men, suffered by men, judged by men, and finally answered for by men. No machine can absolve us.

The Enduring Importance of Just War Principles

In conclusion, allow me to suggest that we reject two equal and opposite errors. The first is pacifism so absolute that it cannot defend the innocent against the aggressor. The second is militarism so intoxicated that it cannot distinguish defense from conquest, justice from vengeance, or peace from submission. The just war tradition stands between them, stern and unsentimental. It permits force when justice requires it, but it chains force to authority, cause, intention, necessity, proportionality, discrimination, and humanity.

Pope Leo's *Magnifica Humanitas* challenges us to see that modern technology can make the old doctrine easier to abuse. That is true, but the conclusion should not be that just war principles are obsolete. To the contrary, the conclusion should be that they are more important today than ever before.

- When weapons become more destructive, proportionality matters more.

- When targeting becomes more automated, human judgment matters more.
- When propaganda becomes more powerful, truth matters more.
- When war becomes more feasible, last resort matters more.
- When states are tempted by dominion, Saint Augustine matters more.
- When lawyers are tempted by cleverness, Aquinas matters more.
- When nations are tempted to surrender moral agency to machines, the human person matters more.

We members of the Federalist Society know that ordered liberty depends on structure: constitutional structure, legal structure, institutional structure, and moral structure. Just war principles are among the structures by which civilization restrains the violence it sometimes must employ. To abandon them would not be realism. It would be surrender—to appetite, to fear, to machinery, and to power ungoverned by law. Let us instead reaffirm, with sober minds and steady hearts, that peace is the object of our desire; that war, when necessary, must be waged only so that peace may be obtained; and that in this age of artificial intelligence and unprecedented destructive capacity, to paraphrase law of war expert Professor Jean Bethke Elshtain, the ancient discipline of just war is not a relic but a necessity.

Charles D. “Cully” Stimson is Acting Director of the Legal Policy Center and Senior Legal Fellow, National Security, at The Heritage Foundation. This Heritage *Lecture* is slightly adapted from an address delivered before the Idaho Lawyers Chapter of the Federalist Society in Boise, Idaho, as the inaugural address of the Federalist Society's Armed Services Legal Network on July 16, 2026.

Endnotes

1. Quoted in *The Summa Theologiæ of St. Thomas Aquinas*, 2nd and Rev. Ed., Question 40, Article 1, Objection 4, New Advent, <https://www.newadvent.org/summa/3040.htm> (accessed July 29, 2026).
2. Quoted in *ibid.*
3. St. Augustine, "Letter 189 (A.D. 418)," New Advent, <https://www.newadvent.org/fathers/1102189.htm> (accessed July 29, 2026).
4. *The Summa Theologiæ of St. Thomas Aquinas*, Question 40, Article 1, Objection 4.
5. *Ibid.*
6. *Ibid.*
7. "Catechism of the Catholic Church," Chapter 2, Article 5, Section III, Paragraph 2309, https://www.vatican.va/archive/ENG0015/___P81.HTM (accessed July 29, 2026).
8. Pope Leo XIV, *Magnifica Humanitas*, Encyclical Letter on Safeguarding the Human Person in the Time of Artificial Intelligence, May 15, 2026, <https://www.vatican.va/content/leo-xiv/en/encyclicals/documents/20260515-magnifica-humanitas.html> (accessed July 28, 2026).
9. *Ibid.*
10. National Archives, "America's Founding Documents: The Constitution of the United States: A Transcription," <https://www.archives.gov/founding-docs/constitution-transcript> (accessed July 29, 2026).
11. 50 U.S. Code Chapter 33, <https://www.law.cornell.edu/uscode/text/50/chapter-33> (accessed July 29, 2026).
12. U.S. Department of Defense, Office of General Counsel, *Department of Defense Law of War Manual*, June 2015 (Updated July 2023), pp. 7–8, <https://media.defense.gov/2023/Jul/31/2003271432/-1/-1/0/DOD-LAW-OF-WAR-MANUAL-JUNE-2015-UPDATED-JULY%202023.PDF> (accessed July 28, 2026).
13. U.S. Army, Judge Advocate General's Legal Center and School, International and Operational Law Department, *Operational Law Handbook*, 2007, p. 12, https://tile.loc.gov/storage-services/service/ll/llmlp/operational-law-handbook_2007/operational-law-handbook_2007.pdf (accessed July 30, 2026).
14. *Ibid.*
15. See U.S. Department of Defense, Office of General Counsel, *Department of Defense Law of War Manual*, pp. 50–70.
16. *Ibid.*, p. 54, fn. 24.
17. U.S. Department of Defense, DoD Directive 3000.09, "Autonomy in Weapon Systems," January 25, 2023, <https://www.esd.whs.mil/portals/54/documents/dd/issuances/dodd/300009p.pdf> (accessed July 28, 2026).
18. Pope Leo XIV, *Magnifica Humanitas*.