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Marvin Lim

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JUST WAR AND THE ROMAN CATHOLIC LIFE ETHIC

Marvin Lim^{*}

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INTRODUCTION

Among mainstream religious and secular political groups, the Roman Catholic Church takes one of the firmest positions on protecting human life. Responding to what Pope John Paul II called the global “culture of death” that has developed since the mid-20th century,¹ the

* Yale Law School, J.D.; Emory University, B.A. Many thanks to Stephen L. Carter, for feedback on this Article at various stages from its inception. Thanks also to Nicole Taykhman, for assistance in editing. Finally, my gratitude goes to Jane S. Jiang, for the numerous conversations that inspired ideas incorporated into this Article, as well as for her encouragement in general. All opinions and mistakes herein are my own.

1. In his famous cyclical *Evangelium Vitae* (“The Gospel of Life”), Pope John Paul II described the “culture of death” as

Church's Canon Law and Catechism state that issues such as abortion, euthanasia, capital punishment, and war demand a consistent application of moral principles valuing the sanctity of each and every human life, above all other considerations.² These principles forbid the intentional ending of lives, especially of innocent people, in all but the most limited circumstances.³ Influential American Cardinal Joseph Bernardin notably dubbed the Church's position as a "consistent ethic of life."⁴

Modern just war theory, which effectively originated in the Church with St. Augustine and St. Thomas of Aquinas, is one embodiment of the Church's broader consistent life ethic. Like its positions on abortion, euthanasia, and capital punishment, the Church firmly curbs the circumstances in which people can morally engage in this activity.⁵ Beyond discussing principles exclusive to the unique circumstance of war, often the Church has explicitly connected its ethical positions on war with its position on other issues where life's sanctity is also at stake. Beyond the Church's formal Canon Law and Catechism, one of the most notable examples is the famous 1983 pastoral letter on war and peace authored by the U.S. Conference of Catholic Bishops (USCCB).⁶ In the midst of making significant attempts to steer the Church's position against nuclear weapons, this statement deftly connected war to

a war of the powerful against the weak: a life which would require greater acceptance, love and care is considered useless, or held to be an intolerable burden, and is therefore rejected in one way or another. A person who, because of illness, handicap or, more simply, just by existing, compromises the well-being or life-style of those who are more favoured tends to be looked upon as an enemy to be resisted or eliminated. In this way a kind of "conspiracy against life" is unleashed.

John Paul II, *Evangelium Vitae*, CATHOLIC-PAGES.COM (Mar. 25, 1995), ¶ 12, available at http://www.catholic-pages.com/documents/evangelium_vitae.pdf.

2. See *Catechism of the Catholic Church*, STGABRIELPARISH.CA (2d ed.) pt. 3, § 2, ch. 2, art. 5, available at <http://stgabrielparish.ca/gallery.2/documents/> [hereinafter *Catechism*]. See *infra* Part I for discussion.

3. See *id.*

4. Cardinal Joseph Bernardin, *A Consistent Life Ethic: An American-Catholic Dialogue*, PRIESTS FOR LIFE (Dec. 6, 1983), available at <http://www.priestsforlife.org/magisterium/bernardingannon.html>; see also Sidney Callahan, *The Consistent Life Ethic*, 2 U. ST. THOMAS L.J. 272 (2005); John L. Carr, *The Consistent Life Ethic: A Look Back, A Look Around, A Look Ahead*, 2 U. ST. THOMAS L.J. 256 (2005) (exploring the history of this ethic); J. Stephen Cleghorn, *Respect for Life: Research Notes on Cardinal Bernardin's "Seamless Garment,"* 28 REV. RELIGIOUS RES. 129, 138-39 (1986); Susan Frelich Appleton, *Unraveling the "Seamless Garment": Loose Threads in Pro-Life Progressivism*, 2 U. ST. THOMAS L.J. 294 (2005); John H. Garvey & Amy V. Coney, *Catholic Judges in Capital Cases*, 81 MARQ. L. REV. 303 (1998).

5. See *supra* note 2 and accompanying text.

6. U.S. CONFERENCE OF CATHOLIC BISHOPS, *THE CHALLENGE OF PEACE: GOD'S PROMISE AND OUR RESPONSE* (19th ed. 2000) [hereinafter USCCB].

the Church's anti-abortion stance, distinguishing unintended loss of innocent life during war from intended killing of a fetus.⁷

Despite the Church's own attempts to connect its position on war to other issues, outside scholarship on the Church's just war doctrine, whether praising or criticizing this doctrine, has done little to analyze it within the context of the Church's broader consistent life ethic. Similarly, analysis of the Church's position on issues like abortion has done little to connect these issues systematically to just war theory, even as scholarship has often compared the Church's positions on abortion, euthanasia, and capital punishment.⁸ Such analysis is especially important in light of the fact that, as the Church itself concedes, just war principles like "proportionality" and "discrimination," though definite in theory, are difficult to apply in practice.⁹ Consequently, existing scholarship misses the potential for the Church's broader life ethic to inform somewhat nebulous just war principles.

Even more importantly, this scholarship has failed to appreciate that, within the twentieth and twenty-first centuries, and particularly since the advent of global terrorism and emerging military technologies, the Church's liberal application of just war theory has potentially threatened the harmony between just war doctrine and its broader life ethic—an ethic that has become more restrictive despite a similar emergence of technologies that arguably improve bioethical and other life-and-death decisions outside the warfare context. In particular, the Church has arguably sanctioned many military actions that, though technically adhering to just war principles, contravene principles found in its doctrine on other issues where life is at stake. Beyond any implications these inconsistencies might have for the Church specifically, they highlight a much broader sociopolitical and legal tension between an enduringly popular theory of international warfare and the strictures placed on the human right to life in non-warfare contexts.

7. *Id.* ¶¶ 285–89. The pastoral letter states that

even justifiable defense against aggression may result in the indirect or unintended loss of innocent human lives. This is tragic, but may conceivably be proportionate to the values defended. Nothing, however, can justify direct attack on innocent human life, in or out of warfare. Abortion is precisely such an attack.

Id. ¶ 286.

8. One exception is a piece by Mary C. Segers, which notes the "inconsistency gap" between the USCCB's qualified position on nuclear deterrence versus its unqualified rejection of abortion as morally impermissible. Mary C. Segers, *The Catholic Bishops' Pastoral Letter on War and Peace: A Feminist Perspective*, 11 FEMINIST STUD. 619 (1985). See *supra* note 2 and accompanying text.

9. See, e.g., USCCB, *supra* note 6, ¶¶ 98, 184 (conceding that concepts such as these are "difficult criterion to apply").

Recognizing this gap in the literature, this Article will argue that the Church's actual application of just war doctrine has indeed contravened its broader, otherwise extremely robust ethic of life. This Article makes this argument by proceeding in three parts. Part I introduces the Church's doctrine on life, as expressed most explicitly in its Canon Law on Sanctions and its Catechism on the Fifth Commandment ("Thou shalt not kill"). Part II explores three specific areas in which the Church's application of just war doctrine clashes with principles located in its broader life ethic. Finally, Part III discusses the implications of these inconsistencies for the Church's future development of its just war doctrine and its broader life ethic, with an eye toward how to harmonize the two. It recognizes that the Church is all but certain to continue adhering broadly to its positions on certain issues like abortion. Nevertheless, there remain ways for these positions and applications of just war theory to converge. Doing so, the Church can better legitimize its seemingly over-formalistic principles.

I. THE ROMAN CATHOLIC CHURCH'S POSITION ON LIFE

The most basic expression of the Church's position on life, including on just war doctrine, is located in its Code of Canon Law on Sanctions, which enumerates punishment for infractions of the Canon.¹⁰ As Canon 1397 states, "A person who commits a homicide or who kidnaps, detains, mutilates, or gravely wounds a person by force or fraud is to be punished."¹¹ The Code defines exceptions to this provision, of which Canon 1323 is most salient: excepted from punishment for violation of 1397 is "a person who acted within the limits of due moderation against an unjust aggressor for the sake of legitimate self-defense or defense of another."¹² How the Church interprets this provision forms the crux of its doctrine on just war and other life issues.¹³

The Catechism of the Catholic Church, in its article on the Fifth Commandment, provides more content to the Canon and encapsulates the Church's broad position on life.¹⁴ From its very first line, this Article strongly stresses the sacredness of life:

Human life is sacred because from its beginning it involves the creative action of God and it remains forever in a special relationship with the Creator, who is its sole end. God alone is the

10. 1983 CODE cc.1311–99.

11. *Id.* c. 1397.

12. *Id.* c. 1323.

13. One other Canon is worth mentioning here: Canon 1398, which states that "[a] person who actually procures an abortion incurs a *latae sententiae* excommunication." *Id.* c. 1398.

14. See *Catechism*, *supra* note 2.

Lord of life from its beginning until its end: no one can under any circumstance claim for himself the right directly to destroy an innocent human being.¹⁵

The principle of the inviolability of life informs the Church's position with respect to specific issues such as war, homicide, torture, abortions and sterilizations, capital punishment, and even organ transplantation, all of which are addressed in the article on the Fifth Commandment.¹⁶ At the same time, the Church recognizes moral distinctions between these different issues, allowing for life-taking more permissively in some circumstances than in others. With this in mind, this Part illuminates the Church's position on four of these issues in particular: abortion, euthanasia, capital punishment, and war. It explores the principles that exemplify how the Church unifies its positions under a consistent life ethic. At the same time, it explores the principles that show how the Church makes subtle ethical distinctions between various circumstances where life is at stake.

A. Abortion and Euthanasia

Flowing from its declaration that life is inviolable “from its beginning until its end” and that intentionally taking innocent life is absolutely impermissible, the Church assumes a rigid stance on abortion and euthanasia.¹⁷ Addressing abortion specifically, the Catechism states: “Human life must be respected and protected absolutely from the moment of conception. From the first moment of his existence, a human being must be recognized as having the rights of a person—among which is the inviolable right of every innocent being to life.”¹⁸

The Church's position on abortion tracks the principles of St. Thomas of Aquinas's double-effect doctrine, which distinguishes between intended good effects of an action and unintended but foreseen evil effects of the same action.¹⁹ An action that has both types of effects may be licit if it meets four principles:

The immediate action itself must be good or indifferent. It must not be intrinsically evil.

The foreseen evil effect itself must not be intended.

15. *See id.* ¶ 2258.

16. *See id. passim.*

17. *Id.*

18. *Id.* ¶ 2270 (citation omitted).

19. Thomas Aquinas, *Summa Theologiae*, IIa-IIae Q. 64, art. 7 [hereinafter *Summa*].

The intended good effect must not be an effect of the evil, but produced directly by the immediate action.

The intended good effect must be commensurate with the foreseen evil effect.²⁰

With respect to the first criterion, the Catechism states: “Since the first century the Church has affirmed the moral evil of every procured abortion. This teaching has not changed and remains unchangeable.”²¹ Pope John Paul II’s historic encyclical *Evangelium Vitae* (“*The Gospel of Life*”), which describes in greater depth the history of the Church’s “unchanged and unchangeable” position, states further:

The moral gravity of procured abortion is apparent in all its truth if we recognize that we are dealing with murder and, in particular, when we consider the specific elements involved. The one eliminated is a human being at the very beginning of life. No one more absolutely innocent could be imagined. In no way could this human being ever be considered an aggressor, much less an unjust aggressor. . . .²²

“This doctrine is based upon the natural law and upon the written Word of God”—and “[n]o circumstance, no purpose, no law whatsoever can ever make licit an act which is intrinsically illicit, since it is contrary to the Law of God which is written in every human heart, knowable by reason itself, and proclaimed by the Church.”²³ Even if one is not personally confident that a fetus is a human being, the Church argues:

[W]hat is at stake is so important that, from the standpoint of moral obligation, the mere probability that a human person is involved would suffice to justify an absolutely clear prohibition of any intervention aimed at killing a human embryo. Precisely for this reason, *over and above all scientific debates and those philosophical affirmations to which the Magisterium has not expressly committed itself*, the Church has always taught and continues to teach that the result of human procreation, from the first moment of its existence, must be guaranteed that unconditional respect which is morally due to the human being in

20. T.A. CAVANAUGH, DOUBLE-EFFECT REASONING: DOING GOOD AND AVOIDING EVIL 26 (Oliver O’Donovan ed., 2006).

21. *Catechism*, *supra* note 2, ¶ 2271.

22. *Evangelium Vitae*, *supra* note 1, ¶ 58.

23. *Id.* ¶ 62.

his or her totality and unity as body and spirit.²⁴

With respect to the other double-effect criteria, the Church acknowledges the difficulties faced by women contemplating abortion. However, it ultimately argues that “[d]irect abortion, that is to say, abortion willed *either as an end or a means*, is gravely contrary to the moral law.”²⁵ Abortion cannot be intended as the end in itself (the second criterion), nor as a means toward another end (the third criterion), such as a mother’s desire “to protect certain important values such as her own health or a decent standard of living for the other members of the family” or to ensure a good quality of life for the yet-unborn baby itself.²⁶ As the *Evangelium Vitae* states, “these reasons and others like them, however, serious and tragic, can never justify the deliberate killing of an innocent human being.”²⁷ Thus, abortion also can never meet the fourth criterion.

At the other end of the lifespan, the Church rejects euthanasia and assisted suicide for very similar reasons. This longstanding stance begins from the proposition that suicide itself is a “gravely evil choice,” one that “so radically contradicts the innate inclination to life” and “represents a rejection of God’s absolute sovereignty over life and death.”²⁸ Thus, euthanasia and assisted suicide themselves are gravely immoral acts (the first criterion).²⁹ Furthermore, “an act or omission which, of itself or by intention, causes death in order to eliminate suffering constitutes a murder gravely contrary to the dignity of the human person and to the respect due to the living God” (the second and third criteria).³⁰ “What really happens in this case is that the individual is overcome and crushed by a death deprived of any prospect of meaning or hope.”³¹ As the Church states:

Even when not motivated by a selfish refusal to be burdened with the life of someone who is suffering, euthanasia must be called a false mercy, and indeed a disturbing “perversion” of mercy. True “compassion” leads to sharing another’s pain; it does not kill the person whose suffering we cannot bear [the fourth criterion, as well as the first again].³²

24. *Id.* ¶ 60 (emphasis added).

25. *Catechism*, *supra* note 2, ¶ 2271 (emphasis added).

26. *Evangelium Vitae*, *supra* note 1, ¶ 58.

27. *Id.*

28. *Id.* ¶ 66.

29. *See Catechism*, *supra* note 2, ¶¶ 2270–83.

30. *Id.* ¶ 2277.

31. *Evangelium Vitae*, *supra* note 1, ¶ 15.

32. *Id.* ¶ 66.

B. *Capital Punishment*

The Catechism of the Church also takes a strong stance against capital punishment. However, this position differs from abortion and euthanasia in one crucial respect: it does not consider capital punishment an intrinsically evil act. “Assuming that the guilty party’s identity and responsibility have been fully determined, the traditional teaching of the Church does not exclude recourse to the death penalty, if this is the only possible way of effectively defending human lives against the unjust aggressor.”³³ The Catechism justifies the immediate action of self-defense as such:

Love toward oneself remains a fundamental principle of morality. Therefore, it is legitimate to insist on respect for one’s own right to life Nor is it necessary for salvation that a man omit the act of moderate self-defense to avoid killing the other man, since one is bound to take more care of one’s own life than of another’s.³⁴

The Catechism further states that “[l]egitimate defence can be not only a right but a grave duty for someone responsible for another’s life.”³⁵ It is notable that these propositions remain true even “though [the aggressor himself] may not be morally responsible because of a lack of the use of reason.”³⁶ Thus, because capital punishment has the potential purpose of self-defense, it is not an intrinsically evil act.

Nevertheless, over the course of its history and particularly since the mid-twentieth century,³⁷ the Church has come to restrict severely when capital punishment may be used even for this purpose. As the Catechism states, “[If] non-lethal means are sufficient to defend and protect people’s safety from the aggressor, [then] authority will limit itself to such means.”³⁸ “Today, in fact, as a consequence of the possibilities which the state has for effectively preventing crime . . . the cases in which the execution of the offender is an absolute necessity are very rare, *if not practically nonexistent*.”³⁹ Should any circumstance exist where capital punishment is proportionate and necessary, it could

33. *Catechism*, *supra* note 2, ¶ 2267.

34. *Id.* ¶ 2264. As the *Evangelium Vitae* confirms, “the intrinsic value of life and the duty to love oneself no less than others are the basis of a true right to self-defense.” *Evangelium Vitae*, *supra* note 1, ¶ 55.

35. *Catechism*, *supra* note 2, ¶ 2265.

36. *Evangelium Vitae*, *supra* note 1, ¶ 55.

37. See, e.g., E. CHRISTIAN BRUGGER, CAPITAL PUNISHMENT AND ROMAN CATHOLIC MORAL TRADITION (2003).

38. *Catechism*, *supra* note 2, ¶ 2267.

39. *Id.* (emphasis added).

meet the other criteria of double-effect beyond being an intrinsically good or neutral action. The preservation of life, not the killing of the aggressor would be the intended good (second criterion), and that good would be produced by the immediate action, not any evil effect of that action (third criterion).⁴⁰ However, in current practice, such circumstances may be few.

C. *Just War*

Developed by Catholic theologians St. Augustine and St. Thomas of Aquinas, traditional just war theory continues to form the backbone of the Church's Catechism on war. The Catechism lays out "strict conditions for legitimate defense by military force,"⁴¹ conditions that perfectly track the *jus ad bellum* principles of just war doctrine:

The damage inflicted by the aggressor on the nation or community of nations must be lasting, grave, and certain. [just cause]

All other means of putting an end to it must have been shown to be impractical or ineffective. [last resort]

There must be serious prospects of success. [probability of success]

The use of arms must not produce evils and disorders graver than the evil to be eliminated. The power of modern means of destruction weighs very heavily in evaluating this condition. [macro-proportionality]⁴²

Although not explicitly within its Catechism, the Church has also adopted the *jus in bello* principles of just war doctrine in other writings. In particular, Church doctrine requires that any given military action intentionally target only combatants (discrimination) and are waged only if foreseen non-combatant injuries do not clearly exceed the anticipated military advantage (micro-proportionality).⁴³

These principles are similar to those the Church has adopted in other areas of its life ethic. Just cause dovetails with the idea that, as with capital punishment, the legitimate self-defense rationale saves war from being an intrinsically evil action that violates the first criterion of

40. See *Summa*, *supra* note 19, Q. 64, art. 7.

41. *Id.*

42. *Catechism*, *supra* note 2, ¶ 2309.

43. See, e.g., USCCB, *supra* note 6.

double-effect.⁴⁴ In fact, similar to capital punishment, the Church states that self-defense in the context of war is not only a right, but a duty, one that includes a “duty to impose *on citizens* the obligations necessary for national defense.”⁴⁵ Proportionality, both in the *jus ad bellum* and *jus in bello* sense, complements the proportionality prong of the double-effect doctrine, as do last resort and probability of success.⁴⁶ Finally, discrimination complements the prohibition of the intentional killing of innocent people either as a means or ends, as seen in applications of the remaining prongs of double-effect to abortion and euthanasia.⁴⁷

Despite parallels between the Church’s just war principles and principles within other parts of its life ethic, a stark difference remains: unlike with abortion, euthanasia, and even capital punishment, the Church has a long history of condoning rather than condemning war. While morally permissible instances of even capital punishment (and certainly abortion and euthanasia) are “practically non-existent,”⁴⁸ the Church has continued to sanction multiple wars even into the late twentieth and twenty-first centuries.⁴⁹ On the one hand, this stark difference does not necessarily lead to the conclusion that the Church’s just war doctrine is inconsistent with its broader life ethic. There may be subtle distinctions between the different types of actions that justify variations in ethical positions. On the other hand, beyond the greater leeway that the Church’s written doctrine gives to war, the Church itself has conceded that there is significant difficulty in interpreting this doctrine in real practice.⁵⁰ The question thus arises: in actually applying its doctrine on just war, has the Church potentially contravened its broader life ethic, as exemplified by its stricter stances on other actions where lives are at stake?

II. CHURCH-BACKED WARS: INCONSISTENCIES WITH THE CHURCH’S BROADER LIFE ETHIC

Having laid out the Church’s doctrine, this Part explores the tensions between the Church’s application of just war theory and its broader life ethic. It focuses on the Church’s application of specific just war principles—just cause, proportionality and last resort, and discrimination—and examines how this application is inconsistent with the various principles laid out by the double-effect doctrine.

44. See *supra* text accompanying note 33.

45. *Catechism*, *supra* note 2, ¶ 2310 (emphasis added).

46. See *supra* note 20 and accompanying text.

47. See *id.*

48. See *supra* text accompanying note 39.

49. See *infra* Part II.

50. See *supra* text accompanying note 9.

A. Applications of Just Cause Versus Doctrine on Intrinsically Good/Evil Acts

The first tension between applications of the Church's just war doctrine and its broader life ethic is the Church's expansive recognition of just cause, which, as this section establishes, has sanctioned military action even when aggression has not placed lives physically at stake. The Church recognizes a right and even a duty of self-defense.⁵¹ Based upon the argument that self-love is a fundamental principle of morality, this right and duty entails that self-defense, including waging war for this purpose, is not an intrinsically evil action in the immediate sense.⁵² In comparison, the Church considers abortion and euthanasia as intrinsically evil actions. It explicitly rejects the argument that maternal health and, notably, quality of life and suffering could make abortion/euthanasia intrinsically good or even neutral actions.⁵³ According to the Church, the sanctity and priceless value of life is inviolate, regardless of variations in actual quality of life. Again, "[n]o circumstance, no purpose, no law whatsoever can ever make licit an act which is intrinsically illicit."⁵⁴

Analyzing these doctrines in aggregate, it seems clear that war in the name of self-defense must be waged only if actual, physical life—and not a particular quality or way of life—is at stake. Unless they themselves are engaging in grave practices that contravene the sanctity of life (e.g., genocide),⁵⁵ in turn negating their right to self-defense, sovereignties need not justify self-defense on the basis that they have a

51. See *supra* text accompanying note 35.

52. See *supra* text accompanying notes 34-35; John Paul II, *Veritatis Splendor* (Aug. 6, 1993), ¶ 80, available at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_06081993_veritatis-splendor_en.html (describing intrinsically evil actions as those that “*per se* and in themselves, independently of circumstances, are always seriously wrong by reason of their object”).

53. See *supra* text accompanying note 32.

54. *Evangelium Vitae*, *supra* note 1, ¶ 62. The Vatican has also stated:

The first right of the human person is his life. He has other goods and some are more precious, but this one is fundamental — the condition of all the others. Hence it must be protected above all others. It does not belong to society, nor does it belong to public authority in any form to recognize this right for some and not for others: all discrimination is evil, whether it be founded on race, sex, color or religion. It is not recognition by another that constitutes this right. This right is antecedent to its recognition; it demands recognition and it is strictly unjust to refuse it.

John Paul II, *Declaration on Procured Abortion* (Nov. 18, 1974), ¶ 11, available at http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19741118_declaration-abortion_en.html.

55. See *Catechism*, *supra* note 2, ¶ 2309 (“damage inflicted by the aggressor . . . must be lasting, grave, and certain”).

morally “good” way of life socially, economically, politically, or even spiritually speaking. To require such a justification, or similarly to allow one nation to wage war out of concern for the other nation’s quality of life, would contravene the principles of intrinsic good/evil so robustly established in the Church’s doctrine on abortion and euthanasia. For the purposes of establishing just cause, it is both sufficient and necessary that another sovereignty engaged offensively in aggression that threatens the lives of the aggrieved nation.

Despite these principles, the Church has deemed causes as “just” throughout the twentieth century, even when arguably only a particular quality or way of life was at stake. The Church has particularly sanctioned numerous wars against communist entities, as motivated predominantly by the anti-religionism of communism rather than any physical threat.⁵⁶ The most noteworthy of such conflicts is the Spanish Civil War, which pitted Franco’s Nationalists against Republicans.⁵⁷ The war arose in the context of the rise of anti-clerical laws supported by Republicans. These laws nationalized Church properties, heavily restricted Catholic schools and teachers, and banned public manifestations of Catholicism.⁵⁸ The measures against Catholic education particularly antagonized the Church, education being an area that, as Pope Pius XI’s 1929 encyclical declared, “belongs preeminently to the Church” in order that it may teach “moral truth.”⁵⁹

It is telling that, when full-fledged war broke out in 1936 after a series of tit-for-tat assassinations between both sides,⁶⁰ the Church did not advocate for peace between the two. Instead, among the Spanish Catholic Church, it actively and materially supported the pro-Catholic Nationalists, “mobilizing the mass of peasants and the middle classes and channeling them into professional and political right wing organisations.”⁶¹ According to the Benedictine writer Father Hilari Raguer:

Nearly the entire hierarchy of the Spanish Church, and nearly all the prominent among the laity, not only did nothing to restrain

56. “The Church has rejected the totalitarian and atheistic ideologies associated in modern times with ‘communism’ or ‘socialism.’” See *id.* pt. 3, § 2, ch. 2, art. 7, ¶ 2425 (under doctrine of the Seventh Commandment, “You shall not steal”).

57. See ANTONY BEEVOR, *THE BATTLE FOR SPAIN: THE SPANISH CIVIL WAR 1936–1939* (2d ed. 2006).

58. See MARY VINCENT, *CATHOLICISM IN THE SECOND SPANISH REPUBLIC: RELIGION AND POLITICS IN SALAMANCA, 1930–1936*, at 121 (1996).

59. Pius XI, *Divini Illius Magistri* (Dec. 31, 1929), available at http://www.vatican.va/holy_father/pius_xi/encyclicals/documents/hf_p-xi_enc_31121929_divini-illius-magistri_en.html.

60. See BEEVOR, *supra* note 57.

61. VICTOR M. PEREZ-DIAZ, *THE RETURN OF CIVIL SOCIETY: THE EMERGENCE OF DEMOCRATIC SPAIN* 128 (1993).

the conflict but spurred it on by joining almost en bloc one of the two sides, the side that ended by being the victor, and by demonizing whoever was working for peace.⁶²

The Spanish Bishops even issued a joint pastoral letter on July 1, 1937, defending Franco's fascists against the communist movement, arguing that "the Communist Revolution . . . was, above all, anti-divine. So the cycle of secularist legislation of the Constitution of 1931 closed with the destruction of all that was connected with God."⁶³ As scholar Mary Vincent has argued, through this particular action, the "Church was to become the most importance source of legitimation for the rebellious generals, justifying the rising as a crusade against godlessness, anarchy, and communism."⁶⁴

In sanctioning war where there was no one clear aggressor, the Church circumvented its own principles for ascertaining a just cause. On the one hand, the Church was undoubtedly a victim under the pre-Civil War Republican regime and its severe anti-clerical laws. During the war, one cannot deny the massacre and execution of many clergy, particularly (though not exclusively) those who backed the Republicans.⁶⁵ Furthermore, under Pope Pius XI, the Vatican itself did not act in a way that could clearly be interpreted as intending to support Franco's military actions.

On the other hand, it is clear that the Spanish Catholic Church's support of Franco's Nationalists—as opposed to any call for peace delivered to both sides, neither of whom could claim to be the sole aggrieved party at any point during the conflict—was motivated not for the purposes of self-defense in the physical sense. Instead, this support must be attributed to the Church's desire to defend religious freedom, and more particularly the Church's place in Spanish civil society. One of Pope Pius's few public communications on the war reinforced this desire, even if unintentionally: he simultaneously expressed a desire for a peaceful end to the conflict and condemned communism, the latter action fueling Franco propaganda.⁶⁶ Though protecting religious freedom is universally important, this principle falls outside the boundaries of just cause when considering the Church's doctrine against

62. HILARI RAGUER, *GUNPOWDER AND INCENSE: THE CATHOLIC CHURCH AND THE SPANISH CIVIL WAR* 209 (2001).

63. Catholic Bishops of Spain, Joint Letter of the Spanish Bishops to the Bishops of the Whole World (July 1, 1937); see also Letter from Enrique Pla y Deniel, Bishop of Salamanca, The Two Cities (Sept. 30, 1936) (claiming that Aquinas's conditions for a just war had been met because the conflict was a crusade to reestablish civil order, hierarchical government, and Christian civilization).

64. See VINCENT, *supra* note 58, at 248.

65. See *supra* text accompanying note 60.

66. RAGUER, *supra* note 62, at 82.

killing for the sake of particular quality or way of life.

Even into the twenty-first century, the Church has continued to highlight its role as victims in the war. In 1971, the Spanish Church fell short of a sufficient vote among its clergy to accept formally a statement that would “humbly recognize and ask pardon that [they] did not know how, when it was necessary, to be true ministers of reconciliation in the midst of our people torn by a fratricidal war.”⁶⁷ In more recent years, both Pope John Paul II and Benedict XVI together have beatified hundreds, but not all executed clergy during the war, inciting criticism that they did not beatify clergy who were in opposition to Franco’s Nationalists.⁶⁸ In response to such criticism, the Vatican has argued that the beatifications were not about taking sides, but about recognizing those who died for their religious beliefs.⁶⁹ Nevertheless, the continuum of history of the Spanish Church and the Vatican’s actions alike create a strong inference that the Church did, and continues, to see the Spanish Civil War as a just defense of ideology and religion.

Several subsequent examples exist where one could reasonably accuse the Church of supporting military action—and, in some cases, failing to support military action—for ideological, rather than physical defense purposes. For example, after the Japanese had infamously staged the so-called Manchurian Incident to give them a pretext for invading China in 1931,⁷⁰ the Church not only ignored diplomatic pleas from the Chinese to speak out against the unjust aggression, but also publicly recognized the state that Japan had established in the occupied area of China.⁷¹ Indeed, both Pope Pius XI and his successor Pius XII consistently reaffirmed their support of the newly established Japanese state, and one Archbishop Zannini even sent a pastoral letter directly to Chinese Catholics asking them to be neutral on the invasion.⁷² Unsurprisingly, some scholars have attributed the Vatican’s response to their anti-communist ideology, given the Communist Party’s rapid growth in China at this time.⁷³

The Church, and particularly the USCCB, also supported the anti-communist cause of the American presence in the Vietnam War.⁷⁴

67. FRANCES LANNON, *PRIVILEGE, PERSECUTION AND PROPHECY* 114 (1987).

68. See *A Complete Listing of the 498 Spanish Martyrs Beatified by Pope Benedict XVI October 2007*, available at <http://www.conferenciaepiscopal.es/index.php/conferencia-episcopal-espanola/secretaria-general/oficina-causa-santos.html>.

69. See *Vatican Beatifies 498 Spanish Civil War Victims*, ABC NEWS AUSTRALIA, Oct. 29, 2007, available at <http://www.abc.net.au/news/2007-10-28/vatican-beatifies-498-spanish-civil-war-victims/2589528>.

70. YAN KEJIA, *CATHOLIC CHURCH IN CHINA* 86–89 (2004).

71. See *id.*

72. See *id.*

73. See *id.*

74. The Vatican remained relatively silent on the issue. In 1965, Pope Paul VI issued an encyclical calling implicitly for peace in Vietnam, but interestingly this provoked a response

Though recognizing “that citizens of all faiths and of differing political loyalties honestly differ among themselves over the moral issue involved in this tragic conflict,” the USCCB’s 1966 letter on “Peace and Vietnam” ultimately stated that it was “reasonable to argue that [American] presence in Vietnam is justified.”⁷⁵ Trumpeting the anti-communist cause, Cardinal Spellman, Military Vicar to Catholics in the Armed Forces, opined that Vietnam was “a war for civilization. Certainly it is not a war of our seeking. It is a war thrust upon us. We cannot yield to tyranny.”⁷⁶

Even when American Catholic support for the war dimmed, it was generally not on grounds that fighting communism was an insufficiently just cause, but that the costs of doing so in Vietnam had become too high.⁷⁷ As the U.S. Catholic Bishops stated in 1971 when it officially withdrew support for the war: “At this point in history, it seems clear to us that whatever good we hope to achieve through continued involvement in this war is now outweighed by the destruction of human life and of moral values which it inflicts.”⁷⁸

Even entering the late twentieth century, the Church continued to imply that fighting particular ideologies could suffice as a just cause, even in the absence of physical life-threatening aggression. This trend defied those who argue that the Church’s just war doctrine has actually become more restrictive since the Second Vatican Council in the 1960s, an argument that is accurate if limited to considering wars of physical aggression without ideological implications.⁷⁹

For example, in his World Day of Peace message in 1982, Pope John Paul evoked the language of traditional aggression to characterize

from Catholic anti-war activists, who believed that Vietnam revolutionaries against America were fighting guerilla warfare for a just cause, in contrast to the Americans themselves. See MARC JASON GILBERT, *THE VIETNAM WAR ON CAMPUS: OTHER VOICES, MORE DISTANT DRUMS* 97 (2001).

75. Raymond J. Crowley, *Urge ‘Climate of Peace’: Prelates Back Moves in Viet*, SARASOTA J., Nov. 21, 1966, at 34.

76. David Lawrence, *In Defense of Cardinal Spellman’s Stand*, LEWISTON DAILY SUN, Jan. 4, 1967, at 4, available at <http://news.google.com/newspapers?nid=1928&dat=19670104&id=LmggAAAAIBAJ&sjid=1GYFAAAAIBAJ&pg=3283,280187>.

77. In 1971, the American Catholic hierarchy officially withdrew its support for the war. In their Resolution on Southeast Asia, the bishops stated:

It is our firm conviction, therefore, that the speedy ending of this war is a moral imperative of the highest priority. Hence, we feel a moral obligation to appeal urgently to our nation’s leaders and indeed to the leaders of all the nations involved in this tragic conflict to bring the war to an end with no further delay.

U.S. CONFERENCE OF CATHOLIC BISHOPS, RESOLUTION ON SOUTHEAST ASIA (1971).

78. *Id.*

79. These arguments arise partly from Pope John XXIII’s encyclical *Pacem in Terris*. See John XXIII, *Pacem In Terris* (Apr. 11, 1963).

communists in the Cold War, despite the “cold” nature of that conflict: he spoke of the “false peace of totalitarian regimes,” arguing that “plans based on aggression, domination, and the manipulation of others lurk in human hearts . . . in spite of certain declarations or manifestations of a pacifist nature.”⁸⁰ Similarly, while the USCCB’s 1983 pastoral letter opposed nuclear war and nuclear weapons-based deterrence as inappropriate means of self-defense, it argued that nations continued to have a moral duty “to protect and preserve those key values of justice, freedom and independence which are necessary for personal dignity and national integrity.”⁸¹ In stressing these values, the USCCB affirmed the Church’s implicit stance that anti-ideology is sufficient to constitute a just cause, as separate from physical security and basic existence.

Since the fall of Soviet communism, the Church has had comparatively fewer opportunities to show whether it still supports war against particular ideologies or ways of life. As the next section will further discuss, the wars it has supported have been limited to situations where life and physical security were unavoidably at stake, such as wars of humanitarian intervention and wars against terrorism.⁸² Yet, there is little evidence to show that the Church has changed its position on the inclusiveness of just cause. Commencing in 1992, the Bosnian War is a more current example of the Catholic Church likely interpreting “just cause” as inclusive of religious freedom. Among other factional lines in this civil conflict following Yugoslavia’s breakup, the war involved a conflict between Serbians and Croats, the latter of whom were predominantly Catholic.⁸³ Akin to the Spanish Catholic Church during the 1920s, numerous scholars have accused the Croatian Catholic Church of propagating Croatian ethnic and religious nationalism in the lead up to the war, which in turn contributed to the violence.⁸⁴ As one scholar has characterized its role, the Church was guilty of portraying Croats as “quasi-immaculate” while portraying the Serbs as “the

80. John Paul II, *Message of His Holiness Pope John Paul II for the Celebration of the Day of Peace* (Jan. 1, 1982), available at http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_19811208_xv-world-day-for-peace_en.html.

81. See USCCB, *supra* note 6, ¶ 175.

82. See *infra* Part II.B; see also U.S. Conference of Catholic Bishops, *The Harvest of Justice is Sown in Peace*, Nov. 17, 1993, available at <http://www.usccb.org/beliefs-and-teachings/what-we-believe/catholic-social-teaching/the-harvest-of-justice-is-sown-in-peace.cfm> (arguing that it is the duty of countries to engage in humanitarian intervention to correct gross abuses of human rights).

83. See generally LAURA SILBER & ALLAN LITTLE, *THE DEATH OF YUGOSLAVIA* (1996).

84. Alex J. Bellamy, *The Catholic Church and Croatia’s Two Transitions*, 30 REL., STATE. & SOC. 45, 50 (2002) (citing scholars who describe the wars “as ethnoreligious in character,” are “adamant that by propagating ethnic Croatian exclusivism the Catholic Church contributed to the spiral of violent,” and argue “that the Catholic Church should be blamed for presenting the political, social and national conflicts in the former Yugoslavia as centuries-long conflicts between essentially opposed human types, types of cultures and civilizations.”).

incarnation of evil.”⁸⁵

Others have argued that, while some in the Church did attempt to propagate such views, Church leadership largely did not, refusing to call upon Catholic Croats to vote for the Croatian regime in power and criticizing atrocities committed by Croats.⁸⁶ Nevertheless, other wartime actions reinforced the perception that the Church implicitly encouraged faith-motivated violence. One in particular is a speech that Pope John Paul II gave in 1994 during his first pastoral visit to Zagreb, Croatia. In a speech made while ethnic and religious tensions were high, the Pope lionized the controversial Croatian Cardinal Stepinac, who led the Croatian resistance against communism during post-World War II Titov regime, but who also incurred the wrath of many Serbians who have long believed that “Stepinac personifies nothing less than Croatian collaboration with the Nazis through his support for the brutal Ustasha fascist regime, which murdered as many as 700,000 Serbs, Jews, and Gypsies at the Jesenovac concentration camp during World War II.”⁸⁷

As one scholar has claimed, the Pope’s actions may be seen as “a vestige of his myopic anti-communism,”⁸⁸ akin to the Church’s consistently unapologetic position on the Spanish Civil War.⁸⁹ As another counterargument, others have pointed out that the Pope also spoke of peace during his speech, sending “a kiss of peace” to the Serbian leadership while encouraging Croatian Catholics to become “apostles of a new concord between peoples.”⁹⁰ Nevertheless, one scholar argued that even a middle ground reading of this speech is problematic:

Cardinal Stepinac himself can hardly be blamed for strife in the 1980s, but the violence the Pope denounced can still be read back into the Cardinal’s actions. By standing up to one form of

85. See *id.* (citing Srdan Vrcan, *Religion and Churches and the Post-Yugoslav War*, in *RELIGION AND NATIONALISM* 63–64 (J. Coleman & M. Tonka eds., 1995)).

86. See Bellamy, *supra* note 84, at 50.

87. P.H. Liotta & Anna Simons, *Thicker than Water? Kin, Religion, and Conflict in the Balkans*, *PARAMETERS* (Winter 1998).

88. As Liotta and Simons state,

Any invocations of the Cardinal are thus charged with meaning, and like the video image of a Serbian priest ritually blessing Arkan’s Tigers, the Pope’s alignment with Stepinac sends all sorts of signals. One way to view the Pope’s refusal to set foot in Yugoslavia until he could pray at the tomb of Stepinac in Zagreb Cathedral is as a vestige of his myopic anti-communism. Perhaps he really did forget the Church’s wider historical role in the Balkans.

See id.

89. See *supra* notes 67–69 and accompanying text.

90. SABRINA PETRA RAMET, *BALKAN BABEL: THE DISINTEGRATION OF YUGOSLAVIA FROM THE DEATH OF TITO TO CIVIL WAR* 281 (1996).

repression having lent his support to another, Cardinal Stepinac prefigures a classic set of Balkan contradictions.⁹¹

Yet other actions have contributed to the perception that the Church implicitly approved faith-motivated violence during the Bosnian War—such as its recognizing Croatia before the European Union itself did so.⁹² Most recently, Carla del Ponte, the chief war crimes prosecutor in the Hague, insisted that the Church was sheltering a top Croatian war crimes suspect, General Ante Gotovina, and that the Vatican was refusing to cooperate (though the Vatican strongly refuted this charge).⁹³

The Church's actions during the Bosnian War are certainly open to interpretation, much more so than its actions during the Spanish Civil War, the Manchurian Incident, or the Vietnam War. On the one hand, some figures in the Catholic Church, including Pope John Paul II during portions of his speech, may have denounced the conflict in general terms. On the other hand, several aspects of both the Croatian Catholic Church's and papal actions lend credence to the idea that the Church continues to support war for ideological or religious reasons, even in the post-Cold War era.

The Church's alleged support for violence in the name of ideology and religion even resurfaced during the 2013 ascendancy of Argentina's Cardinal Jorge Bergoglio to Pope Francis. During this ascendancy, some questioned then-Bergoglio's role in the "Dirty War" between Argentina's communist state and anti-communist guerillas in the 1970s.⁹⁴ At an early point during the war, Bergoglio was the provincial of the Society of Jesus in Argentina, a position through which, according to his accusers, Bergoglio purposefully identified communist-leaning priests for the anti-communist junta to target.⁹⁵ On the one hand, the evidence for Bergoglio's personal active involvement or even tacit compliance with any violence during the war is dubious.⁹⁶ On the other

91. See Liotta & Simons, *supra* note 87, at 31.

92. See *id.* at 32.

93. Del Ponte earlier told British newspaper the *Daily Telegraph* she believed Gen Gotovina was "hiding in a Franciscan monastery and so the Catholic Church is protecting him." "I have taken this up with the Vatican and the Vatican totally refuses to co-operate with us," as she stated. The Church retorted that Ponte had not proven any of her claims. *War Crimes Chief Accuses Vatican*, BBC NEWS, available at: <http://news.bbc.co.uk/2/hi/europe/4263426.stm>. Eventually, Gotovina was found in December 2005 in Spain. *Top Croatian War Crimes Fugitive Apprehended in Spain*, CNN NEWS (Dec. 8, 2005), available at <http://edition.cnn.com/2005/US/12/08/thursday/index.html?iref=allsearch>.

94. Jon Lee Anderson, *Pope Francis and the Dirty War*, NEW YORKER (Mar. 15, 2013), available at <http://www.newyorker.com/online/blogs/comment/2013/03/pope-francis-jorge-bergoglio-argentina-dirty-war.html>.

95. See *id.*

96. See *id.*

hand, the Argentine Catholic Church's role in the junta's anti-communist campaign is less debatable, with at least some within the Church definitively giving active support to this violent ideological campaign.⁹⁷

Though ultimately concerning a conflict from decades ago, this minor controversy about the recently-elected Pope underscores the difficulty of concluding that the Church has made a clean break from its past on this issue. The Church has appeared to back away from more vocal, explicit support of ideological or religious freedom-based violence. Nevertheless, its contemporary reticence to take a stronger stance against such violence, combined with its past history, show that its interpretation of "just cause" in war is at least more permissive than what other post-Cold War rhetoric might indicate. This doctrine has been clear to condemn wars of aggression and territorial conquest, as well as to restrict the permissiveness of even wars of pure physical self-defense. However, the Church has been far less unequivocal on its position with respect to wars where physical self-defense may be mixed with ostensible ideological or religious defense. Until the Church more explicitly clarifies that it does not consider these reasons to be "just causes," its calls for anti-communism and its varying degrees of support for ethno-religious nationalism in Spain, Vietnam, Argentina, and Bosnia create a reasonable inference that the Church does have a more expansive understanding of "just cause"—if not on paper, then in fact.

As Pope Pius XII expressed in his Christmas Message in 1948, the purpose of peace is "the protection of goods of humanity, inasmuch as they are gifts of the Creator."⁹⁸ Given its support of war for purposes even outside of self-defense, it is apparent that the Church defines these goods broadly to include values such as religious freedom, democratic independence, and other traditionally liberal principles. However noble those principles are, they fall outside of the theoretically limited justification for self-defense. Instead, they fall precisely into more expansive considerations of quality and ways of life, considerations that are strictly prohibited in other areas of the Church's life ethic.

B. *Comparing Proportionality/Last Resort in Just War to Other Life Issues*

The second tension between applications of the Church's just war doctrine and its broader life ethic is the inconsistency between what it considers proportionate military action and proportionate actions in other life-and-death circumstances. In the context of abortion and euthanasia, the Church's position on proportionality is clear, dovetailing

97. *See id.*

98. Pius XII, Christmas Message of 1948 (Dec. 24, 1948).

with its position on the intrinsically evil nature of these acts:⁹⁹ even “serious and tragic [circumstances] can never justify the deliberate killing of an innocent human being.”¹⁰⁰ Thus, “no evaluation of costs can outweigh the value of the fundamental good which we are trying to protect, that of human life.”¹⁰¹ The Church does recognize that abortion is often a decision made under difficult, even extreme circumstances. Nevertheless, nothing is so extreme as to justify the even more extreme action of taking a life:

[P]erhaps in quite a considerable number of cases, by denying abortion one endangers important values to which it is normal to attach great value, and which may sometimes even seem to have priority. We do not deny these very great difficulties. It may be a serious question of health, sometimes of life or death, for the mother; it may be the burden represented by an additional child, especially if there are good reasons to fear that the child will be abnormal or retarded; it may be the importance attributed in different classes of society to considerations of honor or dishonor, of loss of social standing, and so forth . . . [But] the damage to moral values is always a greater evil for the common good than any disadvantage in the economic or demographic order.¹⁰²

Undergirding this position on abortion/euthanasia is the Church’s belief not only that human life is sacred even when weak and suffering,¹⁰³ but also that human beings are incapable of making such evaluations without being motivated by exaggerated panic and anxiety, even if they have otherwise good intentions.¹⁰⁴ As Pope John Paul II stated:

99. See *supra* text accompanying note 23.

100. Congregation for the Doctrine of the Faith, *Clarification on Procured Abortion* (July 11, 2009) [hereinafter *Clarification on Procured Abortion*], available at http://www.vatican.va/roman_curia/congregations/cfaith/documetns/rc_con_cfaith_doc_20090711_aborto-procurato_en.html.

101. John Paul II, *Address of John Paul II to the Participants in the International Congress on “Life-Sustaining Treatments and Vegetative State: Scientific Advances and Ethical Dilemmas”* (Mar. 20, 2004) [hereinafter *Life-Sustaining Treatments*].

102. *Declaration on Procured Abortion* (Nov. 18, 1974), ¶¶ 14, 18.

103. See also John Paul II, *Familiaris Consortio* (Nov. 22, 1981) [hereinafter *Familiaris Consortio*], available at http://www.vatican.va/holy_father/john_paul_ii/apost_exhortations/documents/hf_jp-ii_exh_19811122_familiaris-consortio_en.html; *Evangelium Vitae*, *supra* note 1, ¶ 63 (“And yet the courage and the serenity with which so many of our brothers and sisters suffering from serious disabilities lead their lives when they are shown acceptance and love bears eloquent witness to what gives authentic value to life.”).

104. See *Familiaris Consortio*, *supra* note 103, ¶ 30.

Some ask themselves if it is a good thing to be alive or if it would be better never to have been born; they doubt therefore if it is right to bring others into life when perhaps they will curse their existence in a cruel world with unforeseeable terrors . . . The ultimate reason for these mentalities is the absence in people's hearts of God, whose love alone is stronger than all the world's fears and can conquer them."¹⁰⁵

Because of this fear, the Church is concerned that "acknowledging that increasing and decreasing levels of quality of life, and therefore of human dignity, can be attributed from an external perspective" will lead to "a discriminatory and eugenic principle" motivated by nefarious considerations, such as group exclusion or material mentality.¹⁰⁶ On this subject, the Church has recognized that scientific and technical progress, while offering "the hope of creating a new and better humanity," also "causes ever greater anxiety regarding the future."¹⁰⁷ "[O]ne thinks, for example, of a certain panic deriving from the studies of ecologists and futurologists on population growth, which sometimes exaggerate the danger of demographic increase to the quality of life."¹⁰⁸ Discussing the dangers of "presum[ing] to measure the value of a human life only within the parameters of 'normality' and physical well-being, thus opening the way to legitimizing infanticide," the Church makes a slippery slope argument.¹⁰⁹

The Church also emphasizes that people are incapable of making definitive, non-speculative quality of life determinations, even if such determinations were morally permissible. After the Terri Schiavo case brought the issue of life-sustaining treatments for those in "persistent vegetative states" to the political foreground, Pope John Paul II argued that even significant advances in medical technology could not definitively establish that patients in this condition no longer possessed biological and psychological characteristics that have universally defined basic quality of life:¹¹⁰

[I]t is not possible to rule out a *priori* that the withdrawal of nutrition and hydration, as reported by authoritative studies, is the source of considerable suffering for the sick person, even if we can see only the reactions at the level of the autonomic nervous system or of gestures. Modern clinical neurophysiology and

105. *Id.*

106. *Life-Sustaining Treatments*, *supra* note 101, ¶ 5.

107. *See Familiaris Consortio*, *supra* note 103, ¶ 30.

108. *Id.*

109. *Evangelium Vitae*, *supra* note 1, ¶ 63.

110. *See Life Sustaining Treatments*, *supra* note 101.

neuro-imaging techniques, in fact, seem to point to the lasting quality in these patients of elementary forms of communication and analysis of stimuli.¹¹¹

Thus, the Church distrusts human decision-making about quality of life even when based on advanced technology. Reinforcing the Vatican's position, the USCCB argued that Schiavo was merely a person who had "cognitive disabilities" and who was unable to feed herself, retaining "every ounce of her human dignity and deserv[ing] respect and care."¹¹² Regarding the removal of Schiavo's feeding tube, the USCCB stated that "it was not a right to remove medical treatment that was granted, but an order that Terri Schiavo be made to die."¹¹³

The Church's position on proportionality and capital punishment draws upon similar principles, even as it does not deem capital punishment an intrinsic evil. As Part I discussed, the instances in which capital punishment would be a proportionate self-defense mechanism are "very rare, if practically non-existent."¹¹⁴ The Church states that alternatives such as life sentences without parole are sufficient to protect society.¹¹⁵ As with its position on abortion and euthanasia, what undergirds this position on capital punishment is the idea that one cannot predict what a person might contribute to society in the future, particularly if they take corrective actions.¹¹⁶ As the USCCB states, "We cannot know whether God has a purpose for a person's life, even one who has committed a terrible crime and must spend his or her life behind bars."¹¹⁷ Implicit is that one cannot consider the future quality of life of a criminal offender, and that doing so would be an impermissibly speculative exercise.

When one analyzes these principles in tandem with the Church's just war doctrine, it becomes clear that principles such as proportionality

111. *Id.*

112. Cathy Cleaver Ruse, *Terri Schiavo Case Reveals How We Treat Disabled Americans*, LIFE NEWS.COM (Mar. 24, 2005), available at <http://archive.lifenews.com/bio841.html>.

113. Cathy Cleaver Ruse, *Terri Schiavo and the Echoes of Abortion*, USCCB (Mar. 31, 2005), available at <http://old.usccb.org/prolife/publicat/lifeissues/033105.shtml>.

114. See *supra* text accompanying note 39.

115. USCCB, *What is the Catholic Church's Position on the Use of the Death Penalty*, available at http://old.usccb.org/deathpenalty/questions_answers.shtml.

116. *But cf. Summa, supra* note 19.

The fact that the evil ones, as long as they live, can be corrected from their errors does not prohibit the fact that they may be justly executed, for the danger which threatens from their way of life is greater and more certain than the good which may be expected from their improvement.

Id.

117. See *supra* note 115 and accompanying text.

and last resort must be read narrowly. The Church's consistent opposition to the idea that one can make definitive calculations about the value of people's lives should guide military actions. On the one hand, a principle such as macro-proportionality in the military context—that is, calculating whether the good to be gained is worth the destruction of war, including the loss of innocent lives—is an inherently abstract exercise. In its 1983 pastoral letter, the USSCB admitted that applying these principles is difficult and potentially imprecise, even notwithstanding “the ease with which nations and individuals either assume or delude themselves into believing that God or right is clearly on their side.”¹¹⁸ On the other hand, this uncertainty is precisely another reason to allow the Church's broader life ethic to guide a narrow application of just war principles in practice. Because the Church frowns heavily upon speculative calculations about the value of people's lives, military actions should be strictly limited to those that confer demonstrably ample advantages, while causing demonstrably limited destruction, particularly in the way of innocent lives.

In reality, however, just war principles have been applied more broadly than would be consistent with the Church's broader life ethic. The Church's sanctioning of wars into the twenty-first century establishes this proposition. The Bosnian War is the first example of the Church's implicitly broader reading of proportionality and last resort.

In a speech from January 1994, Pope John Paul II urged “all forms of action aimed at disarming the aggressor” in Bosnia.¹¹⁹ The Pope emphasized that, while “all military aggression is judged to be morally wrong, [l]egitimate defense, by contrast, is viewed as admissible and sometimes obligatory.”¹²⁰ Other remarks by the Vatican appeared to indicate support for selective military strikes, with Vatican spokesman Joaquin Navarro-Valls speaking specifically in the language of proportionality by declaring that “it is not the same thing to bombard Belgrade or a mountaintop where some soldiers have placed a mortar.”¹²¹

In supporting such action, however, the Church may have read the principle of last resort too broadly. At the time, American diplomatic peacekeeping efforts in Bosnia had infamously stalled for two years, undercutting more aggressive European efforts to end the conflict through less violent means, such as dividing Bosnia into semi-

118. See USSCB, *supra* note 6, ¶ 94.

119. Alan Cowell, *Pope Seeks a Disarming of “Aggressor” in Bosnia*, N.Y. TIMES (Jan. 13, 1994), available at <http://www.nytimes.com/1994/01/13/world/pope-seeks-a-disarming-of-aggressor-in-bosnia.html>.

120. *Id.*

121. *Id.*

autonomous regions along ethnic lines.¹²² Casting a shadow on Bill Clinton's presidency, these bumpy diplomatic forays raise the question of whether the Vatican's ostensible sanctioning of military action in January 1994 is reconcilable with its position on last resort.

At that time, more diplomatic efforts may still have been possible, in contrast to the outright military response (*i.e.*, NATO military strikes) that catalyzed the end of the war in mid-1995.¹²³ On the one hand, likely few would disagree that the United States stepped in very late in Bosnia. On the other hand, earlier efforts might have proven even less violent, simultaneously preventing the loss of life that occurred during 1994 and 1995 when there was effectively diplomatic and military inaction. In turn, the timing of the Vatican's greater support to military action raises questions as to its position on what qualifies as last resort.

Beyond the Church's sanctioning of humanitarian intervention as in Bosnia, an even clearer example of how it interprets proportionality and last resort is its response to the post-September 11 war on terrorism. Its support of the American military efforts in Afghanistan immediately following September 11 seemed particularly to contravene a narrow reading of proportionality *vis-à-vis* the Church's broader life ethic. Though Pope John Paul II did not issue a public statement explicitly supporting America's decisions to invade Afghanistan, by all accounts he privately and publicly (if implicitly) signaled support for this decision.¹²⁴ Publicly, a papal spokesperson told the media that the Vatican "would understand" if President Bush were to use force.¹²⁵ While the spokesperson was careful to argue that the Church had not necessarily given a "green light" to the use of force, he carefully characterized any such action as "not a matter of an attack, but of active prevention against a threat that has already manifested itself in the horror of a few weeks ago."¹²⁶ The Vatican's top ecumenical official similarly stated, "Every country must defend itself in a just manner. Something has to be done, or else we will all become hostages of these terrorists."¹²⁷ Finally, in 2002, a few months after the military campaign in Afghanistan had begun, the Pope's annual message for the World

122. See Elaine Sciolino, *The Clinton Record: Foreign Policy, Bosnia Policy Shaped by U.S. Military Role*, N.Y. TIMES (July 29, 1996), available at <http://www.nytimes.com/1996/07/29/us/the-clinton-record-foreign-policy-bosnia-policy-shaped-by-us-military-role.html?page-wanted=all&src=pm>.

123. See *id.*

124. *Vatican Signals Wider, Qualified Support for U.S. Military Action*, AMERICA: THE NAT'L CATH. WKLY. (Oct. 8, 2001), available at http://www.americamagazine.org/content/article.cfm?article_id=1073 [hereinafter *Vatican*].

125. John L. Allen Jr., *Mixed Messages on Force Abound During Papal Trip*, NAT'L CATH. REP. (Oct. 5, 2001), http://natcath.org/NCR_Online/archives2/2001d/100501/100501k.htm.

126. *Id.*

127. See *Vatican*, *supra* note 124 and accompanying text.

Day of Peace stressed the existence of “a right to defend oneself against terrorism,”¹²⁸ a statement that stands in contrast to the frequent and very explicit condemnation of the Pope in the Iraq War only two years later.¹²⁹ In fact, as both wars proceeded simultaneously, Catholics would frequently draw a contrast between the unjustness of the Iraq War and the continuing necessity of military action in Afghanistan.¹³⁰

Support among the USCCB and individual American Cardinals was even more explicit and overwhelming. The USCCB officially stated that “[m]ilitary force may be justified in Afghanistan,” though iterating that just war criteria such as proportionality must guide U.S. actions.¹³¹ The President of the USCCB personally expressed regret for the use of force, but ultimately praised President Bush for carrying out “a wise, just and effective response.”¹³² Other cardinals, including those of Chicago, Detroit, New York, and Philadelphia, expressed that U.S. bombings were a “military necessity.”¹³³ As one cardinal stated, the administration should be

commended for the manner in which this war has been conducted so far. The formation of an international coalition, the shared intelligence and coordinated efforts of national and international law enforcement agencies and the steps undertaken to cut off the terrorists’ financial resources are all part of a well-conceived and effective plan.¹³⁴

Condemnation of the war among the Catholic community appeared limited to very few, most prominently the Catholic peace organization Pax Christi USA, which implored “leaders to focus their creative energies on a renewed commitment to building an international order based on . . . justice rather than might.”¹³⁵

128. Pope John Paul II, *Message for the World Day of Peace 2002* (Jan. 1, 2002), available at http://www.vatican.va/holy_father/john_paul_ii/messages/peace/documents/hf_jp-ii_mes_20011211_xxxv-world-day-for-peace_en.html.

129. Pope John Paul II, *Address to the Diplomatic Corps*, Jan. 13, 2003, available at http://www.vatican.va/holy_father/john_paul_ii/speeches/2003/january/documents/hf_jp-ii_spe_20030113_diplomatic-corps_en.html.

130. See, e.g., Russell Shaw, *War in Afghanistan May No Longer Be Just*, OSV DAILY TAKE, available at <http://www.osvdailytake.com/2010/08/shaw-war-in-afghanistan-may-no-longer.html>.

131. USCCB, *Pastoral Message: Living with Faith and Hope After September 11* (Nov. 2001) available at <http://www.usccb.org/issues-and-action/human-life-and-dignity/september-11/a-pastoral-message-living-with-faith-and-hope-after-september-11.cfm>.

132. *Bombs: A One-Size-Fits-All Response*, NAT’L CATH. REP. (Oct. 19, 2001), available at http://natcath.org/NCR_Online/archives/101901/101901p.htm.

133. *Id.*

134. *Cardinal Bevilacqua Tells President Bush the War is Just* (Oct. 16, 2001), available at http://www.americancatholic.org/News/JustWar/usbishops_terrorism.asp.

135. Pax Christi USA, *Official Statement on the Bombing of Afghanistan* (Oct. 9, 2001),

On its face, America's Church-sanctioned military efforts might seem to have been an ethically adherent response to the violence undertaken by the September 11 terrorists and al-Qaeda. However, these efforts become problematic when seen through the lens of the Church's broader life ethic. Several aspects of the military response seem to contradict proportionality and last resort when the Church's broader life ethic is used to interpret these principles. For example, some have criticized the swiftness of the military response. On one hand, though the United States attempted diplomacy with the Taliban government in Afghanistan, the Taliban consistently rebuffed American requests to provide them access to al-Qaeda bases in Afghanistan.¹³⁶ On the other hand, Church-backed American military efforts began less than a month after September 11 took place.

As a useful comparison, the Church condemned America's actions during the 1991 Gulf War in large part because of the Church's beliefs that war was not yet the last resort, though more than five months had elapsed since Iraq had invaded and annexed Kuwait.¹³⁷ Among others during the Gulf War, then-President of the USCCB Archbishop Pilarczyk expressed "fear that . . . moving beyond the deployment of military forces in an effort to deter Iraqi aggression to the undertaking of offensive military action could well violate [just war] criteria, especially the principles of proportionality and last resort."¹³⁸ Given a life ethic that values utmost certainty before life is taken, even for gravely urgent causes, the Church's position in the Gulf War appears much more in line with Church doctrine than its implicit position that the United States had exhausted all possible non-military options in less than one month with respect to Afghanistan.

An even greater problem with the Church's sanctioning of America's military response is not only the timing of that response, but the degree of uncertainty involved in determining proportionality at the outset. The September 11 terrorist attacks were horrific. Furthermore, because of the nature of terrorism, there was naturally a possibility of violent terrorist attacks at some point in the future. For these reasons, one might argue that the military response was both proportionate and a last resort. Yet, as the USCCB has stated in the context of capital punishment, the self-defense test must be "whether society has

available at <http://paxchristiusa.org/2011/01/16/statement-pax-christi-usa-official-statement-on-the-bombing-of-afghanistan/>.

136. *Bush Rejects Taliban Offer to Hand Bin Laden Over*, GUARDIAN (Oct. 14, 2001), <http://www.theguardian.com/world/2001/oct/14/afghanistan.terrorism5>.

137. See Laurence W. Jones, *The Persian Gulf War: A Case Study in Just War Theory* (May 4, 1998) (Master of Theology, thesis, Duke University), app. D, at 109-13, Letter from Archbishop Pilarczyk to President Bush (Nov. 15, 1990) (on file with Defense Technical Information Center).

138. *Id.*

alternative ways to protect itself, not how terrible the crime was.”¹³⁹ More importantly, both the potential benefits and costs of invading Afghanistan were difficult to assess with any degree of certainty. Because terrorism is unlike a conventional war between two sovereignties, instead involving a diffuse network of aggressors located in many sovereignties, it was uncertain to what degree uprooting al-Qaeda specifically in Afghanistan would repel any threats of aggression. For example, while al-Qaeda was undoubtedly responsible for the September 11 attacks, it was difficult to pinpoint when, and even with certainty if, it would strike again in the future.

The difficulty of conceptualizing the degree to which invading Afghanistan would achieve America’s self-defensive goals dovetails with the difficulty of comprehending the costs of such an invasion. On the one hand, American military officials made assurances that the means of war employed would minimize casualties, particularly American casualties and Afghani civilian casualties.¹⁴⁰ For example, the military limited its actions to targeted aerial strikes on known al-Qaeda and Taliban compounds, at least at the beginning of the war.¹⁴¹ On the other hand, while certainly limiting American soldier casualties, limiting on-the-ground military presence made it more difficult simultaneously to know both *ex ante* how many Afghani civilians’ lives were at risk and *ex post* how many of these lives had been taken by American military action.¹⁴² The infamous Qalaye Niazi incident on December 29, 2001 exemplified this problem. There, the United States aerielly bombed what they claimed to be a known al-Qaeda-Taliban compound in Qaloye Niazi, citing secondary explosions that occurred after the bombing as proof of this claim.¹⁴³ However, the Qalaye Niazi village elder claimed that civilians had merely been ordered by retreating Taliban troops to store ammunition at this site, which included housing for ten families of farmers.¹⁴⁴ Ultimately, 52 civilians died, many of whom were merely visiting the village for a wedding.¹⁴⁵

Aside from highlighting the difficulties of cost calculation, this incident highlights the moral complexities of relying heavily on allies for military intelligence, without sufficient supplementation of forces on the ground. As Pax Christi argued:

139. See USCCB, *supra* note 115.

140. See Rumsfeld: *Operation Aims to Clear the Skies*, CNN.com (Oct. 7, 2001), <http://www-cgi.cnn.com/2001/US/10/07/ret.attack.pentagon/>.

141. *Id.*

142. See also *Group of Catholics Calls Terrorism Battle Immoral*, WASH. TIMES (Dec. 27, 2001), <http://www.washingtontimes.com/news/2001/dec/27/20011227-034315-5010r/>.

143. See Rory Carroll, *Bloody Evidence of U.S. Blunder*, GUARDIAN (Jan. 6, 2002).

144. *Id.*

145. *Id.*

The Pentagon goes to extraordinary lengths to avoid noncombatant casualties within the limits it places on itself in order to avoid putting U.S. military personnel at risk. And it is precisely this qualifier that puts into question the morality of the U.S. bombing campaign in Afghanistan . . . The choice to bomb the village instead of sending troops into the village was a deliberate and intentional choice that put at risk innocent women, children, and men.¹⁴⁶

Pax Christi continues:

The fact that many of these villages were nothing more than a few dozen small buildings make their bombing even more incomprehensible. The deployment of an overwhelming number of ground forces on such a small asset would most likely have resulted in the quick departure of any enemy soldiers without a great deal of resistance. But I suppose that allowing the enemy to escape would be unacceptable to our military planners.¹⁴⁷

In the end, Qalaye Niazi was far from an anomaly with respect to civilian casualties: estimates of these casualties up to January 1 year alone ranged from 1000 to 4000.¹⁴⁸

This Article is far from the first to analyze how post-September 11 warfare makes it difficult to interpret and apply traditional just war principles such as proportionality.¹⁴⁹ Given these difficulties, it may not be surprising that, while various Catholic authorities invoked just war theory to support their contention that military action in Afghanistan was morally principled, few, if any, were able to specify precisely how the war (or specific military actions) fit into that theory. For example, while the USCCB issued a statement stating that “special attention must

146. TOM CORDARO, *THE CALCULUS OF KILLING THE INNOCENT: CASUALTY AVERSION & THE PRINCIPAL OF NONCOMBATANT IMMUNITY* (2001), available at <http://storage.paxchristi.net/SD1E02.pdf>.

147. *Id.*

148. Murray Campbell, *Thousands of Afghans Likely Killed in Bombings*, COMMON DREAMS (Jan. 3, 2001), available at <http://www.commondreams.org/headlines02/0103-01.htm>.

149. See, e.g., Marjorie Cohn, *Bombing of Afghanistan is Illegal and Must Be Stopped*, JURIST (Nov. 6, 2001); Joseph L. Falvey, Jr., *Reflections on Just Wars and Just Warriors*, 47 J. CATH. LEGAL STUD. 343 (2008) (discussing varying responses by Catholic officials to the 2003 Iraq War); Ronald J. Rychlak, *Just War Theory, International Law, and the War in Iraq*, 2 AVE MARIA L. REV. 1 (2004) (arguing for an alteration of the scope of just war principles post-September 11); George Weigel, *The Just War Tradition and the World After September 11*, 51 CATH. U. L. REV. 689 (2002) (same); William Joseph Wagner, *As Justice and Prudence Dictate: The Morality of America's War Against Terrorism—A Response to James V. Schall, S.J.*, 51 CATH. U. L. REV. 35 (2001); see also John F. Coverdale, *An Introduction to the Just War Tradition*, 16 PACE INT'L L. REV. 221, 236–38 n.50 (2004) (discussing shift in Catholic doctrine).

be given to developing criteria for when it is appropriate to end military action in Afghanistan,” in the end, no authority ever explicitly proffered such criteria.¹⁵⁰ How just war theory should respond to the uncertainty of the nature of terrorism was (and is) an issue remaining unspecified.¹⁵¹

What has not been discussed before is how America’s response to September 11, and particularly the Church’s support for the invasion of Afghanistan, flouts the Church’s broader life ethic. As others have done, one could argue that traditional just war principles must change to accommodate the changing nature of war. However, this proposition becomes much more difficult to accept when considering that those just war principles operate in the background of a broader life ethic. The Church spurns attempts to make speculative judgments about life in other contexts. Therefore, any alteration or relaxation of just war principles cannot fully yield to the fact that terrorism itself has an inherently uncertain nature. For example, to the extent that the Church adopts the position that technology and science only speculatively establish that patients in persistent vegetative states live a certain quality of life, the Church cannot then allow overly speculative calculations in decisions to fight war. This is especially true when potential alternatives exist to make calculations less provisional, such as on-the-ground troop presence, even when those alternatives entail additional costs. After all, in other areas of its life ethic such as PVS and capital punishment, the Church requires the pursuit of all viable alternatives despite their costs before permitting the extinguishment of life.

With the rise of technologies such as unmanned aerial drones even since the beginning of the Afghanistan War, the Church must reconcile these positions with its positions on war now more so than ever. Later in the Afghanistan War, the U.S. military increased its use of these drones in part because of the belief that, with the greater precision they provide, they could minimize civilian casualties.¹⁵² Nevertheless, as others have argued, the greater ease with which these mechanisms can be deployed could actually increase the number of raids and consequently the civilian casualty rates.¹⁵³ For example, a Human Rights Watch report on civilian casualties in Afghanistan argued that most civilian casualties did not occur in planned airstrikes on Taliban

150. USCCB, *Pastoral Message: Living with Faith and Hope After September 11* (2001), available at <http://www.usccb.org/issues-and-action/human-life-and-dignity/september-11-a-pastoral-message-living-with-faith-and-hope-after-september-11.cfm>.

151. At the time that this Article is being published, the Catholic Church still has failed to put forth a just war doctrine in order to respond to the reality that terrorism creates a lot of uncertainty, thus potentially changing the rules of war.

152. Ben Kiernan & Taylor Owen, *Roots of U.S. Troubles in Afghanistan: Civilian Bombing Casualties and the Cambodian Precedent*, *ASIA-PACIFIC J.* (June 28, 2010), available at <http://www.japanfocus.org/-ben-kiernan/3380>.

153. *Id.*

targets, but rather in the more fluid rapid-response strikes.¹⁵⁴ One U.S. military report found that “inaccurate and unprofessional” reporting by the drone operators has been responsible for a not insignificant number of civilian casualties.¹⁵⁵

Thus, the Church’s distrust of technology in other contexts entails that, at least to some extent, it must distrust technology claimed to limit the cost of war, particularly given that such technology has indeed proven to be fallible. In the abortion and assisted suicide context, the Church argues that technology has been employed to reduce the body to “pure materiality” and to “simply a complex of organs, functions and energies to be used according to the sole criteria of pleasure and efficiency.”¹⁵⁶ Consequently, the Church must also speak out against the use of technology to shield the military and the greater public from the erroneous notion that civilian suffering has been minimal. Furthermore, to the extent that the Church worries that even people with good intentions will make decisions about abortion/euthanasia in exaggerated fear and anxiety, creating a slippery slope of what is considered morally permissible, so it must worry that people under the threat of terrorism will do the same.

Beyond abortion and assisted suicide, what might best show the internal inconsistencies of the Church’s life ethic might be its stance on capital punishment. Like war and unlike abortion or assisted suicide, this practice is not considered intrinsically evil. In accord with this idea, the Church leaves open the possibility that capital punishment may be necessary in “very rare” circumstances.¹⁵⁷ Although not explicitly qualifying what qualifies as such a circumstance, Pope John Paul II’s reference to “steady improvements in the organization of the penal system” indicates that capital punishment might be permissible in instances where, because of a country’s primitive infrastructure, a penal system cannot securely keep those who have committed murder.¹⁵⁸ This doctrine on capital punishment is still restrictive, disallowing the death penalty even when people have been proven to be grave threats and there is the alternative of a penal infrastructure that, however otherwise rudimentary, can still reasonably secure these threats. This stands in contrast to the Church’s application of just war theory, where it has sanctioned military action even when the extent of the threat of particular targets is arguably less well-known (as compared to proven murderers) *and* when there are alternative on-the-ground options that could save more civilian lives.

154. *Id.*

155. *Id.*

156. *Evangelium Vitae*, *supra* note 1, ¶ 23.

157. *See supra* text accompanying note 39.

158. *Evangelium Vitae*, *supra* note 1, ¶ 56.

C. Comparing Discrimination in Just War to Intent/Foresight in Other Life Issues

The third tension between applications of the Church's just war doctrine and its broader life ethic is the Church's relatively permissive stance on intentional versus foreseen killing, in contrast to the restrictive stance on this issue it applies elsewhere in its life ethic. In the context of assisted suicide, the Church permits palliative care, or pain management. However, it restricts the possibility of recasting certain medical actions leading to death as palliative care, arguing that such actions violate double-effect doctrine. Persistent vegetative states are again an important example. The Church forbids the removal of medically-assisted nutrition and hydration from these patients "who can reasonably be expected to live indefinitely if given such care."¹⁵⁹ Such care becomes optional only when "they cannot reasonably be expected to prolong life or when they would be excessively burdensome for the patient or [would] cause significant physical discomfort."¹⁶⁰ In other words, only if there is certainty beyond reasonability that life cannot be prolonged does removal of medical care not constitute a means or end of intentional killing, but rather a means or end of palliative care in itself. Even if a doctor or family member reasonably believes that they are respecting life's boundaries by removing care and have no intention to kill but instead to engage in palliative care, they implicitly violate the Church's doctrine if they do so without greater certainty that life cannot be prolonged by such care.

The Church's position on abortion with respect to intent and foresight is even more restrictive. On the one hand, the Church does allow for some medical treatments intended to preserve the health of the mother so long as the treatment is not abortive in itself, because such treatment would entail that abortion is technically used neither as a means or an end.¹⁶¹

If, for example, saving the life of the future mother, independently of her condition of pregnancy, urgently required a surgical procedure or another therapeutic application, which would have as an accessory consequence, in no way desired or intended, but inevitable, the death of the fetus, such an action

159. USCCB, *Ethical and Religious Directives for Catholic Health Care Services* ¶ 58 (2009). See also *Life-Sustaining Treatments*, *supra* note 101, ¶ 4 ("the administration of water and food, even when provided by artificial means, always represents a natural means of preserving life, not a medical act").

160. *Id.*

161. *Cf. supra* note 20 and accompanying text.

could not be called a direct attack on the innocent life.¹⁶²

On the other hand, the Church interprets this exception extremely narrowly. Thus, it does not permit some medical treatments that could be classified as self-defense, that is producing death not by an evil effect, but directly by the immediate action of self-defense.¹⁶³ As scholar Susan T. Nicholson points out, the Church would permit a woman in early pregnancy with cervical cancer to have a hysterectomy, though without the hysterectomy the fetus would otherwise develop normally, or a woman to remove her fallopian tubes if a fetus was growing there instead of her uterus.¹⁶⁴ In both cases, the procedure is directed not at the fetus itself, but a particular part of the anatomy. However, the Church would not permit a craniotomy in the case of a woman in a prolonged obstructed labor, who will die unless an operation is performed in which the head of the unborn fetus is crushed, even if the craniotomy is not performed the fetus will also likely die.¹⁶⁵ Yet, one may cast this instance as the narrowing of the fetus's head—and not the death of the fetus, in and of itself—that is the means to the end of the mother health, with the death of the fetus only foreseen as an evil effect that is not itself the means.¹⁶⁶ “That the narrowing of the head and not the death of the fetus is the means to this end is demonstrated by the fact that the fetus would not be killed should it somehow survive the force applied to its skull and be removed alive from the birth canal.”¹⁶⁷ Nor would the Church permit abortion for a woman in early pregnancy suffering from chronic hypertension associated with severe renal insufficiency, even if there is a reasonable likelihood that she will die because of the demands placed on her by the pregnancy and the chances of the fetus's survival is slight either way.¹⁶⁸

Perhaps best showing the restrictiveness of the Church's ethic is its official position on the case of Angela Carder, one at the intersection of both end-of-life and beginning-of-life.¹⁶⁹ In 1987, twenty-six weeks into her pregnancy, an earlier bout of cancer (Ewing's sarcoma) was

162. See *Clarification on Procured Abortion*, *supra* note 100.

163. See *Summa*, *supra* note 19 (“Accordingly the act of self-defense may have two effects, one is the saving of one's life, the other is the slaying of the aggressor.”).

164. Susan T. Nicholson, *The Roman Catholic Doctrine of Therapeutic Abortion*, in *FEMINISM AND PHILOSOPHY* 387, 387–88 (M. Vetterling-Braggin et al. eds., 1977).

165. *Id.* at 388.

166. *Id.* at 392.

167. *Id.*

168. *Id.*

169. See Terry E. Thornton & Lynn Paltrow, *The Rights of Pregnant Patients: Carder Case Brings Bold Policy Initiatives*, *HEALTHSPAN* (Jan. 31, 1991), available at http://advocatesforpregnantwomen.org/main/publications/articles_and_reports/the_rights_of_pregnant_patients_carder_case_brings_bold_policy_initiatives.php.

discovered to have metastasized to Carder's lungs.¹⁷⁰ Her plan was to begin radiation and chemotherapy immediately, regardless of the risks to the fetus.¹⁷¹ Disagreeing with her choice and believing (but not unanimously) that she had only days to live, her doctors refused to treat her cancer despite her insistence, instead inserting an oral feeding tube and administering sedatives to delay her death and increase her fetus's chance of development.¹⁷² Concerned that she had not elected to have a C-section, the doctors obtained a court order for one, aided by the testimony of a neonatologist (but not Carder's own) that the fetus had a 60% chance of survival.¹⁷³ Despite Carder's pleas that she did not want that procedure done, it was performed anyway.¹⁷⁴ Ultimately, neither the baby nor Carder survived beyond days after the procedure.¹⁷⁵ Throughout, and as expressed by the amicus curiae brief it filed in support of the doctors, the USCCB argued that "the decision to save [Carder's] unborn child properly recognized . . . the futility of improving A.C.'s situation."¹⁷⁶ The USCCB asserted that Angela's legally recognized interest in her "own health and well-being" could not "have been promoted by [Carder]."¹⁷⁷

Analyzing these ethical positions in tandem with the conceptualization of discrimination in just war theory, there is little articulable reason to apply the concepts of intent and foresight any less restrictively. As the Carder example shows, not only must empirical uncertainty err on the side of preserving life—even at substantial, grave sacrifice—but one should also not be able to recast the taking of life as collateral consequences that are neither means nor ends. First, analogizing from the PVS context, there must be a substantial deal of certainty as to who qualifies as combatants and non-combatants before engaging in military action, subjective individual intent aside. Second, there must be some limit as to the moral permissibility of arguing that a military action that kills non-combatants has this effect only collaterally—that is, not part and parcel as a direct means to self-defense—just as the Church implicitly adopts the position that the narrowing of a fetus's head is part and parcel of the means of fetal killing to save a mother's life.

Nevertheless, as the Church's sanctioning of the American initial military efforts in Bosnia, Afghanistan, and Libya demonstrate,

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.*

175. *Id.*

176. Brief for U.S. Catholic Conference as Amicus Curiae Supporting Appellees, *In re A.C.*, 573 A.2d 1235 (D.C. 1990) (87–609).

177. *Id.*

contemporary applications of just war principles are inconsistent with the broader life ethic's conceptualization of discrimination. For example, during the Bosnian War, the NATO strikes mostly focused on military sites, such as munitions storage sites, heavy weapons, and air defense in the vicinity of safe areas, or what the military deemed as having only "medium" risk of collateral damage if attacked.¹⁷⁸ This strategy was likely responsible for the relatively minimal casualties incurred by either side, military and civilians included. However, NATO also targeted many "joint use" sites, including key bridges, as well as sites located in or next to civilian dwellings, such as barracks and radio relay towers.¹⁷⁹

On the one hand, NATO had a clear, deliberate plan in place to minimize civilian casualties in these instances of military action. For example, it did not strike sites located adjacent to civilian dwellings unless it had precluded that an errant weapon would cause unintended harm, and targets were often hit so late at night as to minimize the likelihood that even military personnel would be hurt.¹⁸⁰ On the other hand, from an *ex ante* perspective, the strategy to target deliberately and knowingly both joint use and civilian-adjacent sites highlights the potentially minimal gap that actually exists between intent and foresight. Regardless of the efforts used to minimize civilian casualties, that these sites could be targets at all exemplifies the difficulty in extricating these concepts from each other.

Similar criticisms can be leveled at the Church-sanctioned military campaigns in Afghanistan and Libya.¹⁸¹ Military efforts in Qalaye Niazi, Afghanistan resulted in civilian deaths that may have been avoided with greater on-the-ground presence, providing a greater degree of discrimination between combatants and non-combatants.¹⁸² Organizations such as Pax Christi USA have further criticized the campaign for targeting infrastructure, such as civilian power plants, that was ostensibly critical to sustaining large non-combatant populations.¹⁸³ As one scholar states, Secretary of Defense Donald Rumsfeld's claims that the United States was "focused totally on military targets . . . depend[ed] upon accepting that U.S. attacks against the main telephone exchange in Kabul, the electrical grid in Kandahar, and the hydroelectric power station adjacent to the Kajaki dam constituted

178. See ROBERT C. OWEN, OPERATION DELIBERATE FORCE: A CASE STUDY ON HUMANITARIAN CONSTRAINTS IN AEROSPACE WARFARE 62 (2001), available at <http://www.hks.harvard.edu/cchrp/Web%20Working%20Papers/Owen2001.pdf>.

179. *Id.* at 63.

180. *Id.* at 65.

181. See *supra* Part II.B.

182. *Id.*

183. See Pax Christi USA, *supra* note 135.

legitimate military targets.”¹⁸⁴

The 2011 NATO bombing campaign in Libya, supported by Church officials particularly in the United States, is similar in these regards. Although the USCCB was not as consistently vocal in its support of this campaign as compared to Afghanistan, it stated that the campaign “appeared to meet” the just cause criterion, furthermore directly “recognizing [that] serious efforts are being made to avoid directly targeting civilians.”¹⁸⁵ Though Vatican support was less robust, Pope Benedict XVI did not condemn the attacks until well after U.N. Security Council-backed bombings had started,¹⁸⁶ merely expressing “fear and trepidation” about the situation until then.¹⁸⁷ Yet, the same moral questions regarding discrimination arise as they did in Afghanistan. For example, how much better could efforts to avoid killing civilians have worked with traditional on-the-ground presence?¹⁸⁸ Even just in the opening days of the attack, one might legitimately question the military’s decision to target Moammar Gadhafi’s compound, which contained apparatuses crucial to the dictator’s command and control over Libyan forces, but which also contained residential facilities where non-combatants were usually housed.¹⁸⁹ Given that NATO itself admitted that the nighttime timing of many attacks made it difficult to ascertain civilian deaths *ex post*,¹⁹⁰ one could further inquire as to whether attempts to ascertain potential deaths *ex ante* could have been sufficient. As with the military campaign Afghanistan, it is undeniable that NATO took many steps to avoid harming civilians, often not damaging civilian infrastructure useful to the Libyan government.¹⁹¹ The *New York Times* pointed out:

184. Nicholas J. Wheeler, *Protecting Afghan Civilians from the Hell of War* (2001), available at [http://essays.ssrc.org/10years after911/protecting-afghan-civilians-from-the-hell-of-war/#fn-251-24](http://essays.ssrc.org/10years%20after%20911/protecting-afghan-civilians-from-the-hell-of-war/#fn-251-24).

185. USCCB, *Letter to Thomas E. Donilon, National Security Advisor* (Mar. 24, 2011), available at <http://old.usccb.org/sdwp/international/callafrica/2011-03-24BishopHubbardtoNationalSecurityAdvisor.pdf>.

186. See John Thavis, *Pope Calls for Suspension of Fighting in Libya*, CATH. HERALD (Mar. 28, 2011), available at <http://www.catholicherald.co.uk/news/2011/03/28/pope-calls-for-suspension-of-fighting-in-libya/>.

187. Francis X. Rocca, *Pope Benedict Stays Neutral on Libya Attacks*, RELIGIOUS NEWS SERVICE (Mar. 21, 2011), available at http://www.huffingtonpost.com/2011/03/21/pope-neither-condemns-end_n_838737.html

188. See *supra* Part II.B.

189. See CNN Wire Staff, *Coalition Targets Gadhafi Compound*, CNN (Mar. 21, 2011), available at <http://edition.cnn.com/2011/WORLD/africa/03/20/libya.civil.war/index.html>.

190. Mark Townsend, *Operation Odyssey Dawn Commences to End Gaddafi Onslaught on Benghazi*, GUARDIAN (Mar. 19, 2011), available at <http://www.guardian.co.uk/world/2011/mar/19/operation-odyssey-dawn-tomahawks-libya>.

191. C.J. Chivers & Eric Schmitt, *In Strikes on Libya by NATO, An Unspoken Civilian Toll*, N.Y. TIMES (Dec. 17, 2011), available at http://www.nytimes.com/2011/12/18/world/africa/scores-of-unintended-casualties-in-nato-war-in-libya.html?pagewanted=all&_r=0.

While the overwhelming preponderance of strikes seemed to have hit their targets without killing noncombatants, many factors contributed to a run of fatal mistakes. These included a technically faulty bomb, *poor or dated intelligence and the near absence of experienced military personnel on the ground who could help direct airstrikes*. The alliance's apparent presumption that residences thought to harbor pro-Qaddafi forces were not occupied by civilians repeatedly proved mistaken, the evidence suggests, *posing a reminder to advocates of air power that no war is cost- or error-free*. NATO's response to allegations of mistaken attacks had long been carefully worded denials and insistence that its operations were devised and supervised with exceptional care. Faced with credible allegations that it killed civilians, *the alliance said it had neither the capacity for nor intention of investigating and often repeated that disputed strikes were sound*.¹⁹²

Naturally, one can argue that intentionally not placing more troops on the ground saved American soldiers' lives in both Afghanistan and Libya. Nevertheless, principles of intent and foresight in other areas of life ethic have never abrogated the need for certainty in ensuring that innocent lives cannot somehow be spared, regardless of subjective intent, even when actual physical self-defense is at stake. The example of persistent vegetative states may not be perfectly analogous because of the absence of self-defensive goals in that instance. However, some cases of abortion to save the mother's life may be instructive. In the circumstance of a woman in prolonged obstructed labor, even though the mother will certainly die without a craniotomy (a self-defensive purpose), that the fetus has even a slim chance of survival even if the mother dies leads to the Church's position that a craniotomy is morally illicit because it is intentional killing.¹⁹³ This position stands even if the doctor or the mother herself wholeheartedly believes that she merely foresees, not intends the fetus's death.

This example points to another problem in the Church's applications of discrimination, beyond its contravention of the idea that uncertainty when life is at stake must err on the side of preserving life. In particular, the Church's application of discrimination in war is inconsistent with the idea, pervasive in abortion, that one can seldom conceptualize killing innocents as a foreseen collateral consequence, rather than an intended means or end in itself. In the craniotomy example, one is prevented from arguing that the death of the fetus was actually a

192. *Id.* (emphasis added).

193. See Nicholson, *supra* note 164.

collateral consequence, and that the narrowing of the fetus's head *per se* was the means toward the end of maternal health. Applying this level of stringency to the war context, one should not permissively be able to argue that killing non-combatants is a collateral consequence instead of inextricably part of the direct means of achieving self-defense, which would make the military action in question illicit. When a military relies on so-called surgical strikes without sufficient on-the-ground verification of who is a combatant and who is not, it arguably loses the opportunity to argue that any non-combatant death is merely a collateral consequence. In other words, militaries should not be able to escape the stringency of double-effect distinctions, as seen in the abortion examples, by deliberately intending to preserve uncertainty.

Putting moral formalism aside, it is difficult to see why a situation like a medically necessary craniotomy or the case of Angela Carder is, for practical purposes, any different from the few situations where the Church deems abortion to meet the discrimination requirement. Putting moral formalism aside, it is difficult to see why large, foreseen, and potentially avoidable collateral consequences in war themselves meet this requirement. If such unforgiving consequences are to be justified by the discrimination requirement, interpretations of this concept must be more internally coherent.

III. RECONCILING JUST WAR THEORY AND THE CHURCH'S CONSISTENT LIFE ETHIC

Given the inconsistencies between the Church's applications of just war principles and the principles found elsewhere in its life ethic, the question arises: Can these principles be reconciled, and, if so, how? That the Church seeks a harmonious life ethic, inclusive of its applications of just war doctrine, seems evident particularly given how it organizes its official Catechism on the Fifth Commandment,¹⁹⁴ as well as how other Church documents consistently connect doctrine on one practice to reinforce its doctrine on other practices.¹⁹⁵ Yet, given the numerous inconsistencies addressed in Part III, it is unclear if and how such a harmonious life ethic is actually possible.

This Part explores the possibility of reconciling the challenges faced in applications of just war theory *vis-à-vis* the Church's broader life ethic. Across the topics of just cause, proportionality, and discrimination, this Part explores several possibilities for better harmonization. First, the complexities of applying just war principles in practice might call for an alteration of the Church's broader life ethic,

194. See Part I.

195. *Id.*

which might become more permissive with respect to practices that the Church has heavily restricted. Second, the Church might impose tighter thresholds for meeting the criteria for just war, in accordance with the Church's strict treatment of life in other contexts. Third, the Church might proffer a more comprehensive explanation for why war, given its nature and purposes, merits the more permissive treatment it appears to receive compared to other matters where life and death is at stake. Ultimately, this Part finds that the Church is unlikely to proffer a plausible explanation for why war should be treated so differently compared to other issues. Instead, even while the Church is unlikely to abandon wholly its position on other issues, there may be ways for these positions and just war theory to converge. Because the Church seeks a harmonious life ethic, and in order to buttress the moral force of its principles, it should consider taking steps to reconcile the various doctrines.

A. *Just Cause*

The Church does not restrict the just cause of self-defense to circumstances when human lives are physically at stake, implicitly allowing the defense of means, ways, and qualities of life to qualify as a sufficiently good justification.¹⁹⁶ Yet, though this position is inconsistent with the Church's broader position that considerations of quality of life cannot justify killing, it is all but absolutely certain that the Church will not alter this broader position. The Church will not abandon its centuries-long tradition of regarding abortion and euthanasia as intrinsic evils even when they are based on well-intended quality of life considerations.¹⁹⁷ Instead, imposing a more restrictive understanding of just cause is the more pragmatic, realistic alternative. This alternative would entail that the Church sanctions war only if truly existential threats are at hand.

At the same time, though this may be a more realistic alternative, restricting just cause only to truly existential threats may be equally problematic. First, the question arises of what precisely counts as an existential threat. For example, the self-defense rationale traditionally allows countries to fight against aggressors. Yet, to avoid the spilling of any blood on either side, one might argue that the aggrieved country could simply surrender and put up no resistance. Thus, at least a few might argue that that this scenario does not pose a situation where life and death were truly at stake. Second, while it has not been pressed on this issue since the end of the Cold War, the Church seems unlikely to relinquish its stance that defending way-of-life concepts such as

196. *See supra* Part II.A.

197. *Id.*

religious freedom and independence is a just cause even if through violence. A counterargument might be found in the context of the ongoing Arab-Israeli conflict. With regards to this conflict, though the Church invites Christians “to understand this religious attachment [by Israelis to claimed land] which finds its roots in Biblical tradition,” it states that the “existence of the State of Israel and its political options should be envisaged not in a perspective which is in itself religious, but in their reference to the common principles of international law.”¹⁹⁸ Nevertheless, where not merely religious land, but a religious lifestyle is threatened, as in the Spanish Civil War or more broadly with communism, the Church’s history reveals its position more clearly.

A third alternative would be for the Church to make a distinction between taking life in the name of defending a society’s religious freedom as a way of life, and taking life in cases of abortion and euthanasia for the sake of not inflicting suffering and an abject quality of life. Here, the Church also faces difficulties. First, the Church would naturally argue that religious freedom and the Catholic religion specifically in general are necessary for human flourishing, while practices such as abortion and euthanasia are not. However, one might counter that, rather than taking others’ lives to defend one’s religion, resisting non-violently or even sacrificing one’s own life for religion protects religious freedom more strongly. The Church’s long tradition of martyrdom of Catholics without arms, inclusive of those clergy who were massacred in the Spanish Civil War, supports the idea that such self-sacrificial behavior reinforces the communal strength of religion, perhaps even more so than taking up arms does.¹⁹⁹

Second, while one might attempt to stress that one scenario involves non-innocent aggressors while the other involves innocent human beings, the Church’s doctrine does not actually consider “innocence” in making distinctions between good or neutral acts and evil acts. What makes self-defense morally permissible is that one is upholding one’s own life and that the killing of other person—whether guilty or innocent—is not technically the means of achieving this end, but a collateral consequence of the immediate action of defending one’s own life.²⁰⁰ In other words, it is an issue of discrimination/intent, not just cause. As underlined in its argument against capital punishment that even non-innocent individuals have purpose in life and may be able to reform, the Church does not assume the position that non-innocent and

198. Commission for Religious Relations with the Jews, *Notes on the Correct Way to Present the Jews and Judaism in Preaching and Catechesis in the Roman Catholic Church* (Mar. 6, 1982), available at http://www.vatican.va/roman_curia/pontifical_councils/chrstuni/relations-jews-docs/rc_pc_chrstuni_doc_19820306_jews-judaism_en.html.

199. See *supra* Part II.A.

200. See, e.g., *supra* text accompanying note 162 (saying nothing about innocence).

innocent individuals have differing moral worth.²⁰¹ Therefore, distinguishing between innocent people and non-innocent aggressors does little to reconcile the problem.

With these difficulties in reconciling principles, what becomes clear is that the Church must above all address why some forms of corporal, psychological, or spiritual suffering—but not others—merits the taking of life. Again, the Church is all but absolutely certain not to change its position on issues like abortion or euthanasia. Still, it must consider why the abject pain and suffering that these practices often inflict on other people is of a kind that people must withstand, even as they need not withstand suffering arising from the absence of other goods.

While the Catholic Church's doctrine addresses this argument to some degree, it potentially downplays or mischaracterizes certain issues. For example, it largely presents pregnant women's concerns for the well-being of their families and potential child as abstract economic or demographic concerns, rather than largely a concern that a child might be subject to sustained, agonizing, and in real practice, insurmountable indignities through a lifetime.²⁰² Unsurprisingly, some of the idealistic solutions it offers—for example, a redistribution of resources to ensure the well-being of pregnant women's families²⁰³—may miss the practical realities of these problems, potentially rendering many people to suffer while these solutions slowly (or never) take effect.²⁰⁴ Even when the Church most directly addresses these realities—for example, when it argues that no degree and length of potential pain justifies abortion or assisted suicide—its argument that

201. See *supra* text accompanying note 116.

202. See *supra* note 102 and accompanying text.

203. As the *Evangelium Vitae* states:

The ways of solving the population problem are quite different. Governments and the various international agencies must above all strive to create economic, social, public health and cultural conditions which will enable married couples to make their choices about procreation in full freedom and with genuine responsibility. They must then make efforts to ensure greater opportunities and a fairer distribution of wealth so that everyone can share equitably in the goods of creation. Solutions must be sought on the global level by establishing a true economy of communion and sharing of goods, in both the national and international order.

Evangelium Vitae, *supra* note 1, ¶ 91.

204. One example might be adoption. According to some statistics, over 400 million “abandoned children live on their own on the streets of hundreds of cities around the world. They subsist hand to mouth. They struggle just to survive the day.” *Statistics on Abandoned Children*, INTERNATIONAL STREET KIDS, available at <http://www.internationalstreetkids.com/statistics.php> (last visited Mar. 30, 2014). Yet even the most generous estimates of the number of Americans actively interested in adoption are only above 1 million. See Elizabeth Bartholet, *Where Do Black Children Belong? The Politics of Race Matching in Adoption*, 139 U. PA. L. REV. 1163, 1166 n.5 (1991).

pain is an existence that all persons must bear, and even something that brings meaning to life, is difficult to comprehend “by reason itself” for the many persons experiencing indignities that shock the conscience (for example, malnourished children who lack basic human necessities, and terminally ill persons who wish to die in a non-traumatic way).²⁰⁵

The Church’s reverence of life is noble. However, it also underscores not only classically difficult ethical questions (e.g., is someone better off living in abject suffering than being killed), but also new ones emphasized by its views on just cause doctrine in war. As Pope John Paul II stated in 1982, “people[] have a right and even a duty to protect their existence and freedom.”²⁰⁶ Why freedom, in addition to existence? Why is it better to fight to live freely, at the cost of human lives including potentially one’s own, than to live in bondage, at the cost of no life? That the Church implicitly believes that there are certain principles beyond life itself that are worth defending requires that they have a more comprehensive vision for why other principles are excluded. Only by presenting such a vision can the Church truly reconcile “just cause” doctrine across its life ethic.

B. *Proportionality/Last Resort*

In contradiction to its rigid position against attempting to make valuations of life in other areas, the Church sanctions war even when there is great uncertainty as to whether the benefits to the proffered just cause doctrine outweigh the cost of human destruction. On the one hand, given two conflicting realities—that the Church is unlikely to change its broader life ethic, but that the nature of threats like terrorism makes speculative calculations all but necessary—it seems unlikely that either just war doctrine or the Church’s broader life ethic can begin to converge. On the other hand, arguing that war and self-defense inherently require more permissive standards of conduct than other contexts is a problematic option as well.

Regarding the argument that war and self-defense require more permissive standards, the context of war might actually exacerbate, rather than mitigate the concerns that the Church has elsewhere in its life ethic. For example, the Church limits speculative valuations of life in abortion and euthanasia because of the belief that humans are incapable of making such decisions without exaggerated anxiety and

205. These arguments interact in complex ways with the concepts of consciousness and autonomy, the former argument potentially justifying abortion versus infanticide (e.g., because of the importance of present human experience as compared to future potential), and the latter argument potentially justifying assisted suicide versus infanticide.

206. See John Paul II, *supra* note 80, ¶ 12.

fear.²⁰⁷ Yet these fears are arguably greater precisely when one's own life and autonomy seem physically and imminently at stake, which is far less the case when people consider practices like euthanasia.²⁰⁸ Though the Church was staunchly opposed to the 2003 Iraq War, this war shows exactly human's capacity to wage war based on unfounded fear.²⁰⁹

Where there are even more compelling reasons and evidence to wage war against terrorism, human beings may ironically continue to be prone to disproportionate responses, all while the Church sanctions those responses. Thus, although the nature of security threats like terrorism may counsel acceptance of a greater degree of uncertainty than tradition would dictate, the leeway cannot be too great. Otherwise, doctrine would too greatly enter the territory of the specific ends justifying the particular means. Just as the Church recognizes the slippery slope of legitimizing practices like assisted suicide, so it must recognize the same slippery slope of legitimizing more permissive practices of war.

Furthermore, any attempt to argue that self-defensive war requires inherently more permissive standards would somehow have to distinguish why some abortions such as craniotomies are impermissible even when a mother is not just speculatively likely, but scientifically certain to die without this procedure—that is, even when a procedure is undoubtedly used for self-defense.²¹⁰ Otherwise, significant dissonance will continue to exist between standards of war, where uncertainty about self-defensive benefits is insufficient to bar action, and the rest of the Church's life ethic, where uncertainty about self-defensive benefits (e.g., that treatment would prolong Angela Carder's life) may be sufficient to bar action that would harm another person.²¹¹

What the Church appears to be left with is to attempt making war ethic and its broader life ethic converge, at least to some extent. Though it is certainly difficult to apply such abstract principles as proportionality, it can no longer be enough for the Church to concede this point (as the USCCB did in 1982) without making more explicit distinctions that would guide military actions, particularly in an era of uncertain threats. Above all, this would involve defining the extent of good faith effort that military efforts must make to obtain all of the information they can, to mitigate speculative applications of principles like proportionality. How much should militaries be able to rely solely on aerial assaults, whether manned or unmanned? Must militaries risk

207. See *supra* Part II.B.

208. See *id.* (though granted, there are exceptions, what with the history of eugenics experiments).

209. See John Paul II, *Address to the Diplomatic Corps* (Jan. 13, 2003).

210. See Nicholson, *supra* note 164, at 388.

211. *Supra* text accompanying notes 169–77.

on-the-ground presence in order to gain better intelligence about the benefits and costs of war? If not what, why is this not a violation of broader life ethic?

C. *Discrimination*

In contrast to the Church's generally restrictive stance on the issue of intent and foresight, it has a much more permissive stance on these principles with respect to war. Unlike with other inconsistencies, this tension may have the greatest likelihood of resolution by the Church altering its broader life ethic, at least to a small extent. With the ultimately narrow and rare issue of an abortion by craniotomy, for example, the Church might be willing to recognize that the killing of a fetus is a collateral consequence, rather than a means in itself, of a self-defensive end goal.²¹²

The Church might adopt this position particularly considering the presence of certainty in the grim outcomes of the mother and child absent performance of the craniotomy procedure. When analyzing these prongs of the double-effect doctrine, arguably there is little moral difference between this procedure and a hysterectomy.²¹³ Perhaps what undergirds the Church's position is that certain procedures are more brutal and affronting of life than others—but this is true of much of war, a reality that technology often exacerbates instead of ameliorates.²¹⁴ These abortion scenarios are undoubtedly ones where the self-defense rationale applies. So, it is difficult to see why a mother cannot claim that a craniotomy is morally equivalent to a military action that kills innocent non-combatants only foreseeably. By making small changes to its broader life ethic, the Church can begin to reconcile the problem posed by uncertain threats like terrorism to the requirement that military actions distinguish between combatants and non-combatants.

Despite this potential for moderately altering the Church's positions to make it more consistent with applications of just war principles, the Church must still take care to avoid permissive standards for meeting discrimination in war. On the one hand, it is impractical to require that military actions be restricted to those where there is a high level of certainty that innocent civilians will not be killed even unintentionally. On the other hand, the Church must still address the extent to which military leaders have a responsibility to lessen uncertainty about potential harm to combatants and non-combatants. Just as objective certainty, and not an individual's subjective intent, matters in the scenario of deciding whether to remove medical care from a person in a

212. Cf. Nicholson, *supra* note 164, at 388.

213. Cf. *id.*

214. See *supra* Part II.B.

persistent vegetative state, so the Church must be careful to let unmitigated uncertainty about combatants and non-combatants allow military actions to escape the discrimination requirement. Therefore, even while the Church might loosen intent requirements in other area of its doctrine, it should simultaneously consider requiring military actions to meet a high threshold for meeting discrimination. From a practical standpoint, this might require military actors to take more action on the ground, despite its risks, before conducting aerial assaults. Such a potential moral requirement is particularly crucial when manned aerial assaults morph more and more into unmanned assaults, as they appear to be doing, further removing the military from non-combatants on the ground.

Even more than the principles of just cause doctrine and proportionality, the principle of discrimination demonstrates the chasm between the just war doctrine of the Church and the rest of its consistent life ethic. In this realm, the end result of its moral formalism entails that even some mothers with the most compelling of legitimate self-defense claims must die, along with their fetuses. Meanwhile, militaries can take scores of civilian life in incident after subsequent incident with moral immunity, as they appeared to do in the opening salvos of Afghanistan. Such inconsistencies pose the greatest challenge to the Church's claims that its doctrine on life is not merely justified by faith, but knowable by reason, entailing that even those who do not subscribe to Catholic faith should reach the same moral conclusions. These inconsistencies also fuel popular criticism about extensive focus on issues like abortion by Christians, compared to somewhat less importance on other similarly life-and-death issues.²¹⁵ Ultimately, it is understandable that the Church must draw moral and ethical lines somewhere, even strong ones. However, where those lines are inconsistent with one another, a purportedly consistent life ethic loses much of its moral force – and consequently its public support.

CONCLUSION

For whatever inconsistencies might exist between the Church's applications of just war doctrine and its consistent life ethic, the Church still arguably has a restrictive view of war. Indeed, some have criticized the Catholic Church's position on post-Cold War just war theory as being too restrictive. George Weigel argues, for example, that the Church's restrictive default position has been on display since

215. See, e.g., Thomas L. Friedman, *Why I am Pro-Life*, N.Y. TIMES (Oct. 27, 2012), available at <http://www.nytimes.com/2012/10/28/opinion/sunday/friedman-why-i-am-pro-life.html>.

September 11, criticizing the Church (despite its support for military action in Afghanistan) for its warnings about “violence begetting violence – as if a proportionate and discriminate use of military force in a just case were the moral equivalent of turning a plane into a weapon of mass destruction.”²¹⁶ In this statement, Weigel propounds a much broader reading of proportionality and discrimination than the Church itself would.²¹⁷

Despite this criticism, however, the Church’s applications of just war are actually not restrictive enough when they are compared to the entirety of the Church’s life ethic. On the one hand, Pope John Paul II might especially be lauded for restricting the moral permissiveness of war in certain instances. On the other hand, any shift must be evaluated in light of the fact that he also restricted the permissiveness of other actions, like abortion, assisted suicide, and capital punishment. For whatever shift occurred with respect to just war, the shifts in the other aspects of Catholic life doctrine went much further, as encapsulated in the landmark *Evangelium Vitae*.

No matter how precisely the Church chooses to re-conceptualize its life ethic, there will likely have to be two broad steps. First, it must articulate more clearly its just war policies *ex ante*. Particularly in an age of changing technology, it is no longer sufficient for the Church merely to concede that it is difficult to apply certain principles like proportionality; make statements in ostensibly tentative support for military action without specifically explaining its reasoning; then bring the full force of Vatican or USCCB condemnation only *ex post*. Such is not the path the Church takes with respect to other issues, like abortion. So it should not be the path it takes with actions that even more people agree are an affront to human life.

Second, the Church must give greater consideration as to the counterarguments to its positions on issues concerning the rest of its life ethic. As exploration of these issues shows, even the most restrictive positions on life are qualified and narrowed by concepts like intent and innocence. These concepts certainly are morally relevant. However, the Church must give deeper and more explicit consideration as why other concepts, such as stage of life, consciousness, suffering, or dignity are not—particularly since the Church emphasizes that illicitness of acts like abortion are not only “contrary to the Law of God,” but also somehow “knowable by reason itself.”²¹⁸ In succinct terms, the answer to the question of why suffering exists, already eluding generations of philosophers and public intellectuals, is a question only complicated by

216. George Weigel, *The Just War Tradition and the World After September 11*, 51 CATH. U. L. REV. 689, 694 (2002).

217. *Id.*

218. *Evangelium Vitae*, *supra* note 1, ¶ 62. (emphasis added).

these issues.

This Article has attempted to illuminate problems with the Catholic Church's applications of just war theory and its broader life ethic. It finds that, while the Church's reverence for the sanctity of life places it in a unique and noble category of mainstream organizations, this reverence is threatened by these problems of inconsistency. By identifying these problems, this Article goes beyond existing scholarship, which has often identified problems with the Church's just war applications, but not *vis-à-vis* broader life ethic that can simultaneously illuminate—and constrain—these applications. While there are many different ways to reconcile these positions, some are less viable and helpful than others. In any case, particularly as the world has entered a world with uncertain threats, it is clear that the Church must give greater reflection to these issues.